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AIA® Document A102™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the sixth day of January in the year two thousand twelve
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Burbank Housing Corporation
1819 N. Grismer Avenue
Burbank, CA, 91504
(818)559-2336

and the Contractor:
(Name, legal status, address and other information)

RCI Builders
2985 E. Hillcrest Drive, Suite 107
Thousand Oaks, CA, 91362
(818) 865-0200
License #835114

for the following Project:
2223-2235 Catalina
Construction of twenty residential units over semi-subterranean parking on a full podium deck.

The Architect:
(Name, legal status, address and other information)

PMA pablo maida architect
933 20th Street, Unit D
Santa Monica, CA, 90403

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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(1836407385)

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 RELATIONSHIP OF THE PARTIES
- 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 5 CONTRACT SUM
- 6 CHANGES IN THE WORK
- 7 COSTS TO BE REIMBURSED
- 8 COSTS NOT TO BE REIMBURSED
- 9 DISCOUNTS, REBATES AND REFUNDS
- 10 SUBCONTRACTS AND OTHER AGREEMENTS
- 11 ACCOUNTING RECORDS
- 12 PAYMENTS
- 13 DISPUTE RESOLUTION
- 14 TERMINATION OR SUSPENSION
- 15 MISCELLANEOUS PROVISIONS
- 16 ENUMERATION OF CONTRACT DOCUMENTS
- 17 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's

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interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement shall be January 12, 2012 of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be stipulated in the Notice to Proceed issued by Burbank Housing Corporation. The Notice to Proceed shall provide the Contractor with 7 (seven) days to commence the Work. The substantial completion date will be Eleven (11) calendar months from the date of commencement of the work, as amended pursuant to the terms herein.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

Not Applicable.

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Three Hundred Thirty-Five (335) calendar days from the date of commencement of the Work, as illustrated in the approved Construction Schedule dated _____, which shall be incorporated as Exhibit C and made part of this Contract Agreement.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

See Construction Schedule provided by RCI Builders dated January 19, 2012.

Portion of Work	Substantial Completion date
Phase II - GMAX	335 Calendar days from the date of commencement of the Work.

(Paragraph deleted)

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

N/A

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee. The Contractor's Fee shall be defined at the addition of the Contractor's overhead and profit.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

5.1.1.1 The Contractor's Fee shall be 3.75%, to be adjusted up or down at the end of the job, depending on the actual cost of the GMP at the end of the project.

5.1.1.2 The reimbursement cost of insurance to the owner for general liability (11.95%/100) insurance to be Fifty Fifty Six Thousand Two Hundred SixtyThree Dollars and Zero Cents (\$56,263.00). This is percentage based and will vary. This is not intended to limit the cost of insurance to Contractor.

Init.

5.1.1.3 The construction contingency (2%) to be Ninety Five Thousand Six Hundred Eighty Four Dollars and Zero Cents (\$95684.00), and may be added to during construction.

5.1.1.4 The General Conditions to be a lump sum of Three Hundred Twenty Four Thousand Six Hundred Ninety Four Dollars and Zero Cents (\$324,694.00).

5.1.1.5 Contractor's Fee and Contractor's General Conditions, which include all Preconstruction Services, shall not exceed the amounts as stipulated above except as provided per Article 5 herein. The inclusions and exclusions in Contractor's Fee and General Conditions are defined in Exhibit B incorporated herein and attached hereto.

.1 Contractor's Percentage Fee as applied to the cost of the Work shall be three point seventy five percent (3.75%).

.2 Contractor's General Conditions are a lump sum cost based on Eleven (11) month construction duration. See Exhibit A.

.3 Should Substantial Completion of the Work be delayed beyond the last day of the Contract Time, and provided that such delay is due to either (i) an extension of time based on a written Change Order, signed by Contractor, Construction Manager/Architect and Owner, which specifically states the amount of time which shall be added to the Contract Time, or (ii) a delay directly caused by Owner provided that Contractor delivers written notice to Owner of the basis for the Owner caused delay and a statement that this delay shall extend the Contract Time and result in additional General Conditions of \$6764 per week, and such Owner caused delay is not thereafter cured within three (3) business days after Owner's receipt of such notice, then Contractor's General Conditions shall be extended at the sum of \$1352 for each working day of delay, excluding Saturdays, Sundays, and Holidays, or as per the written Change Order noted herein.

5.1.1.6 Contractor's Overhead and Fee and lump sum of the General Conditions as stipulated in Article 5 preceding shall be paid to Contractor on a monthly basis, which includes an allowance of ten (10) working days of delay due to rain and/or inclement weather in accordance with an approved schedule of values or in direct proportion to the percentage of completion of the Work. In addition, all normal Holidays are taken into account over the timeframe of the construction schedule.

→ 5.1.1.7 The Contractor's billing for the General Conditions and Overhead and Fee will match the overall percentage of completion for the construction stated on the Application for Payment.

5.1.1.8 Contractor's General Conditions shall be a Reimbursable Cost of the Work and are listed in the Schedule of Values, see Exhibit B.

5.1.1.90 Contractors' Overhead and Fee and General Conditions as stipulated in Article 5.1.1.8 preceding shall be paid to Contractor on a monthly basis in accordance with an approved Schedule of Values or in direct proportion to the percentage of completion of the Work.

5.1.1.10 The total Contractor's fee will be adjusted for Changes in Work as follows:

.1 For additive Scope Changes as requested by the Owner subsequent to the establishment of the GMP a three point seventy five percent (3.75%) overhead and fee, plus 1.195% Insurance, plus 1.5% Bond Fees for the General Contractor, and Subcontractor if bonded, plus reimbursable General Conditions for Plan Reproduction and Postage associated with the processing of the Changes in the Work, shall be added to the cost of work. For additive Scope Changes, Contractor will make no additional claim for estimate preparation, Contract Administration, extended General Conditions, contingent or consequential damages unless the Scope of the Change extends the date of Substantial Completion of the project as a whole, or as the requirement for Additional General Conditions as agreed by the parties in writing prior to commencement of the Change.

Init.

.2 For deductive Scope of Changes as requested by the Owner subsequent to commencement of Construction the Work will be deducted at full cost pro-rata fee but with no deduction in General Conditions. The estimated value shall be the direct construction costs plus the Contractor's Fee, Insurance, and Bond.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

See Section 5.1.1.10

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Not Applicable

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed eighty percent (80 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum, of the Cost of the Work including the Contractor's Fee and General Conditions is guaranteed by the Contractor not to exceed Five Million One Hundred Thirty Six Thousand Thirty Seven Dollars and Zero Cents (\$5,136,037) See Article 5.2.2 as follows) which includes a bond provided by the general contractor and selected subcontractors, subject to additions and deductions by Change Order as provided in the Contract Documents. Such selected maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner, except as provided in paragraph 5.1.1.5.3 and 5.1.1.10.

5.2.2 The Guaranteed Maximum Price is defined as the sum of all services and subcontracted Work at their actual awarded cost; plus all materials to be incorporated into the Work, furnished FOB jobsite, tax included; and all agreed upon labor for their installation; plus all amounts as agreed as Allowances; plus Contractor's General Conditions; plus any other bona fide costs as described in Article 5 herein plus Contractor's percentage fee.

5.2.3 At the time all trade Work has been bid, qualified and recommended for award for all Contract Documents by Contractor and approved by Construction Manager (project buyout), whose approval will not be unreasonably withheld, the Guaranteed Maximum price shall be deemed fixed in accordance with Article 5.2.1 preceding. At the time the Guaranteed Maximum Price is deemed to be fixed, this Agreement between Owner and Contractor shall be amended by written Change Order to include the final GMP, including a detailed price summary of any allowances or alternates to be included in the Work; a listing of all final Contract Documents; summary of qualifications, inclusions and exclusions in the Scope of Work; and the agreed upon completion date.

(Insert specific provisions if the Contractor is to participate in any savings.)

Incentive Clause: Any savings in the Guaranteed Maximum Price other than those attributable to items covered under 5.1.2 Savings shall be credited 75% to Owner and 25% to Contractor. One Hundred Percent (100%) of any savings in the Allowances line items and/or in the Contingency line item, including Contractor's fee, shall be returned to Owner. For changes which reduce the cost of work, the estimated value shall be the direct cost of the Work plus the Contractor's Fee, General Conditions, Insurance, and Bond. Contractor shall provide Owner with an itemized accounting report representing each line item savings of projected savings

Init.

every month. Contractor will provide Owner with a change order to request approval for re-allocation of the contingency to specific line items.

(Table deleted)

(Paragraphs deleted)

§ 5.2.4 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

Not Applicable

§ 5.2.5 Allowances included in the Guaranteed Maximum Price, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
Site Security	Thirty thousand dollars (\$30,000)
Light Fixtures	Seventy two thousand dollars (\$72,000)
Purchase selective Subcontractor Bonds	One hundred twenty five thousand dollars (\$125,000)
Cabinet and Counter Clarifications	Ten thousand dollars (\$10,000)
2 nd Floor decking at courtyard	Eleven thousand one hundred eighty dollars (\$11,180)
Directory	Three thousand five hundred dollars (\$3,500)

§ 5.2.6 Assumptions, if any, on which the Guaranteed Maximum Price is based:

Based on Qualifications & Exclusions in the General Contractor's GMAX proposal which shall be incorporated as Exhibit B and made part of the Contract Agreement.

§ 5.2.7 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom based on Contractors involvement in the preconstruction process, expertise with affordable housing construction, and familiarity of the design intent of the Architect. Such further development does not include such things that cannot be anticipated, such as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 5 herein and in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Agreement.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Article 6 and 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

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§ 6.1.1 COST OF THE WORK

§The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6 and 7.

6.1.2 Costs as defined herein shall be actual costs paid by the Contractor, less all discounts, rebates, and salvages that shall be taken by the Contractor, subject to Article 9 of the Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, are included within the Guaranteed Maximum Price specified in Paragraph 5.2 above: however, in no event shall the Owner be required to reimburse the Contractor for any portion of the Cost of the Work incurred prior to the Commencement Date unless the Contractor has received the Owner's written consent prior to incurring such costs.

6.1.3 Notwithstanding the breakdown or categorized of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimburse categories.

Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost, which approval shall not be unreasonably withheld, the parties shall endeavor to identify any such costs prior to executing this Agreement.

6.1.4 Contractor is to follow the approved Schedule of Values dated January 19, 2012. Refer to Exhibit B

6.1.5 Upon receipt of bids in all subcontracted trades and for all materials, F.O.B jobsite, tax included, Contractor shall turn over to Construction Manager copies of all bids and proposals for review, and shall provide Construction Manager with its analysis of bids received and its recommendation as to award of subcontracts for each trade scope of work to be performed, and estimated costs for materials, equipment, and labor for Work to be performed by Contractor's own forces. Contractor shall not award subcontracts or purchase orders without written authorization of Construction Manager in the form of a fully executed Letter of Authorization. This is the process by which the Guaranteed Maximum Price is established.

§ 6.2 LABOR COSTS

§ 6.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site. .

§ 6.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3 and Contractor's written policies published prior to the date of this Agreement.

§ 6.3 SUBCONTRACT COSTS

6.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

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§ 6.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

(Paragraph deleted)

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

(Paragraph deleted)

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

(Paragraph deleted)

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

(Paragraph deleted)

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

(Paragraph deleted)

§ 6.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

(Paragraphs deleted)

§ 6.6 MISCELLANEOUS COSTS

§ 6.6.1 Premiums for that portion of insurance required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

(Paragraph deleted)

§ 6.6.2 Sales, use gross receipts or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

(Paragraph deleted)

§ 6.6.3 Fees and assessments for licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents shall be paid for by the Owner, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

(Paragraph deleted)

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§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents, unless Contractor knew of or should have known of such infringement; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

(Paragraphs deleted)

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

(Paragraph deleted)

§ 6.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

(Paragraphs deleted)

§ 6.7 OTHER COSTS AND EMERGENCIES

(Paragraph deleted)

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

(Paragraphs deleted)

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007 to the extent not (1) caused by negligence or willful misconduct of the Contractor; a subcontractor; or anyone for whom either is responsible, or (2) capable of being prevented through timely notice of an unsafe condition to the Owner.

(Paragraph deleted)

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

(Paragraphs deleted)

§ 6.8 RELATED PARTY TRANSACTIONS

(Paragraphs deleted)

§ 6.8.1 For purposes of Section 6.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

(Paragraph deleted)

§ 6.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

(Paragraphs deleted)

ARTICLE 7 COSTS TO BE REIMBURSED

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7.1 The term "Reimbursable Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Reimbursable Cost of the Work shall include only the items set forth in this Article 7.

7.1.2 Wages of construction workers directly employed by the Contractor to perform the construction of the Work, including welfare, unemployment compensation, social security and other benefits. But only as included in and limited by the General Conditions. Construction workers directly employed by the Contractor shall carry a burden of 35% plus State Fund Worker's Comp cost.

7.1.3 Wages or salaries of the Constructor's supervisory and administrative personnel when stationed at locations other than the site with the Owner's approval, which shall not be unreasonably withheld, but only for that portion of their time required for the Work and only as included in and limited by the General Conditions.

7.1.4 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction. All discounts for cash or prompt payment shall accrue to the Contractor.

7.1.5 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.1.6 Cost of all materials, temporary facilities, and equipment and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work.

7.1.7 Reasonable rental costs for necessary temporary facilities, machinery, equipment, and hand tools used at the site of the Work, whether rented from the Contractor or others. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

7.1.8 That portion directly attributable to this Contract of premiums for insurance and bonds.

7.1.9 Losses and expenses not compensated by insurance or otherwise, sustained by the Contractor in connection with the Work, provided they have resulted from causes other than the fault or neglect of the Contractor.

7.1.10 Costs of removal of debris from the site.

7.1.11 Costs incurred in taking action to prevent threatened damage, injury or loss in a case of an emergency affecting the safety of persons and property.

7.1.12 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

(Paragraphs deleted)

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 6.2.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

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- .6 Any cost not specifically and expressly described in Article 7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Accounting, payroll, and data processing costs not directly related to the Construction of the Work unless specifically included in the Guaranteed Maximum Price; and
- .9 Any costs for any expenses which occur prior to the written notice to proceed with Construction unless specifically included in the Guaranteed Maximum Price.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Construction Manager. The Contractor shall then determine, with the approval of the Owner and the Construction Manager, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 N/A

§ 10.3 Subcontracts or other agreements entered into by Contractor shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

10.4 Contractor shall obtain a minimum of three (3) competitive bids from qualified and properly certified Subcontractors in C.S.I. categories 2 through 16 unless otherwise approved in writing by Owner. Any bidding by Contractor's work force on C.S.I categories also shall be approved by Owner in writing. Contractor shall provide Owner with a copy of all subcontractor bids & contracts between Contractor and Sub-contractor.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Construction Manager, Architect, and Owner by the Contractor and Certificates for Payment approved by the Construction Manager, Architect, and Owner, , the Owner

Init.

shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 12.1.3 Provided that an Application for Payment is received by the Construction Manager, Architect, Owner not later than the first day of the month, the Owner shall make payment of the certified amount to the Contractor not later than the 31st day of the same month. If an Application for Payment is received by the Construction Manager/Owner after the application date fixed above, payment shall be made by the Owner not later than 35 days after the approval of the Application for Payment by the Construction Manager and Architect, for which approval shall not be unreasonably withheld.

(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit conditional lien releases in the amount of the progress billing, and within twenty (20) days of payment shall submit unconditional lien releases in the amount of the previous progress billing..

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values approved by Owner submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager or Owner to may require. This schedule, unless objected to by the Construction Manager, Architect, or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Request of payment for Allowances items shall be made based on the actual costs of the work. Contractor shall submit all appropriate documentation evidencing the actual costs.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of Ten (10%) percent. The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of Ten (10%) percent from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

Init.

- .7 Subtract amounts, if any, for which the Construction Manager has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Construction Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Construction Manager has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Construction Manager;
- .4 **Close-out documentation from MEP's subcontractors, including warranties, operating and maintenance manuals have been submitted in duplicate; and**
- .5 **As-Builts plans have been submitted in duplicate.**

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting (final payment application) to the Construction Manager by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Construction Manager will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Construction Manager reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Construction Manager is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Construction Manager final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Construction Manager's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Construction Manager's final Certificate for Payment, or as follows:

See Section 9.10 Final Completion and Payment of AIA 201-2007

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as

Init.

provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Construction Manager will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Construction Manager.)

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☒ [X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ [] Litigation in a court of competent jurisdiction

☐ [] Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1.

Init.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

N/A

§ 15.3 The Owner's representative:
(Name, address and other information)

Judith Arandes, Executive Director
Burbank Housing Corporation
1819 N. Grismer Avenue
Burbank, CA, 91504
(818) 559-2336

§ 15.4 The Contractor's representative:
(Name, address and other information)

Steven Rice, President
RCI Builders, Inc.
2985 E. Hillcrest Drive, Suite 107
Thousand Oaks, CA, 91362
(805)865-0200

§ 15.5

§ 15.6 Other provisions:

Owner represents and warrants that this Project is being built as apartments and that Owner has obtained government permits and has procured insurance with the understanding that the Project will be built and used as apartments. In the event that Owner, or successor in interest, converts the Project to condominiums, Owner shall defend, indemnify, and hold harmless the Contractor for any claims of defective construction or failed design associated with a differing standard of care for construction of condominiums and apartments.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 16.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Construction Specifications dated August 29, 2011 by PMA Pablo Maida Architect

Section	Title	Date	Pages
---------	-------	------	-------

§ 16.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

100% Construction Drawings dated _____

Number	Title	Date
--------	-------	------

§ 16.1.6 The Addenda, if any:

Number	Date	Pages
Exhibit A- Drawings	January 19, 2012	
Exhibit B- Budget Summary	January 19, 2012	
Exhibit C- Construction Schedule	January 19, 2012	
Exhibit D- Submittal Schedule	January 19, 2012	
Exhibit E – Qualifications	January 19, 2012	
Exhibit F – Alternates	January 19, 2012	
Exhibit G – Request For Proposal	February 23, 2011	
(Exhibits used for reference only)		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

- 1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- 2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
RCI Builders: Performance and Payment Bond	\$73,137 Bond covering \$5,062,900
Subcontractors: Performance and Payment Bond Allowance	\$125,000 Subcontractor Bond Allowance, at Owner's discretion.

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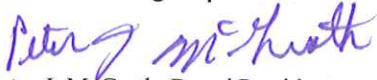
User Notes:

(1836407385)

This Agreement entered into as of the day and year first written above.

(Row deleted)

Burbank Housing Corporation



Peter J. McGrath, Board President

(Printed name and title)



RCI Builders, Inc.

Steve Rice, President

(Printed name and title)

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AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

2223-2235 Catalina
Burbank, CA, 91504

THE OWNER:

(Name, legal status and address)

Burbank Housing Corporation
1819 N. Grismer Avenue
Burbank, CA, 91504
(818)559-2336

THE ARCHITECT:

(Name, legal status and address)

Pablo Maida
PMA Pablo Maida Architect
933 20 Street, Unit D
Santa Monica, CA, 90403
(310)828-8282

TABLE OF ARTICLES

- | | |
|----|--------------------------------------------------|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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User Notes:

(878264888)

INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.4.2, 13.7, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,
4.2.7, 9.3.2, 13.5.1

Arbitration

8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5,
3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,
4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1,
15.3.2, 15.4.1

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Init.

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7,

9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8,

5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1,

9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2,

15.1.3

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,

11.3.9

Claims, Definition of

15.1.1

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

Claims for Additional Time

3.2.4, 3.7.4.6.1.1, 8.3.2, 10.3.2, 15.1.5

Concealed or Unknown Conditions, Claims for

3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,

11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,

6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,

15.1.4

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract

Administration

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,

9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,

13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,

11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,

14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,

9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3,

9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.3

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7,

9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,

8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2,

15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Init.

Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.7

Costs

2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance,

Rejection and Correction of

2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2, 11.1.2

Emergencies

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Init.

Execution and Progress of the Work
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,
 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,
 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
 Extensions of Time
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
 10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
 Faulty Work
 (See Defective or Nonconforming Work)
Final Completion and Final Payment
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,
 12.3.1, 14.2.4, 14.4.3
 Financial Arrangements, Owner's
 2.2.1, 13.2.2, 14.1.1.4
 Fire and Extended Coverage Insurance
 11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
 Guarantees (See Warranty)
Hazardous Materials
 10.2.4, 10.3
 Identification of Subcontractors and Suppliers
 5.2.1
Indemnification
 3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,
 11.3.7
Information and Services Required of the Owner
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
 1.1.8
 Initial Decision Maker, Decisions
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
 Initial Decision Maker, Extent of Authority
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,
 15.2.5
Injury or Damage to Person or Property
 10.2.8, 10.4.1
 Inspections
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
 9.9.2, 9.10.1, 12.2.1, 13.5
 Instructions to Bidders
 1.1.1
 Instructions to the Contractor
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
 Insurance
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
 Insurance, Effective Date of
 8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
 10.2.5, 11.3
 Insurance, Stored Materials
 9.3.2
INSURANCE AND BONDS
11
 Insurance Companies, Consent to Partial Occupancy
 9.9.1
 Intent of the Contract Documents
 1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
 Interpretations, Written
 4.2.11, 4.2.12, 15.1.4
 Judgment on Final Award
 15.4.2
Labor and Materials, Equipment
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,
 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
 Labor Disputes
 8.3.1
 Laws and Regulations
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,
 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,
 13.6.1, 14, 15.2.8, 15.4
 Liens
 2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
 Limitations, Statutes of
 12.2.5, 13.7, 15.4.1.1
 Limitations of Liability
 2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,
 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2,
 11.2, 11.3.7, 12.2.5, 13.4.2
 Limitations of Time
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,
 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
 Material Suppliers
 1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
 10.2.4, 10.3

Init.

Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1,
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,
9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**,
15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, 7.4
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,
10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7,
9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2,
14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7,
9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14,
15.2.8, 15.4.1
Notice of Claims
3.7.4, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,
14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, 2.2, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2,
4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3,
7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4,
9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2,
12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to
Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications
and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17,
4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, 9.9, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,
14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,
9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1,
13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1

Performance Bond and Payment Bond

7.3.7.4, 9.6.7, 9.10.3, 11.4

Permits, Fees, Notices and Compliance with Laws

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF
10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.3

PROTECTION OF PERSONS AND PROPERTY
10

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,
15.2.8, 15.4

Rejection of Work

3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2,
9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2,
13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

**Review of Contractor's Submittals by Owner and
Architect**

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

**Review of Shop Drawings, Product Data and Samples
by Contractor**

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4,
13.4, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8,
9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3.7

Init.

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,

7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

Suspension by the Owner for Convenience

14.3

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor

14.1, 15.1.6

Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.6

Termination by the Owner for Convenience

14.4

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2,

9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,

10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,

5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,

9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14,

15.1.2, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 13.7, 15.1.2

Title to Work

9.3.2, 9.3.3

Transmission of Data in Digital Form

1.6

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3.7

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

Weather Delays

15.1.5.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5,

9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7,

9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, 13.3, 14,

15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1,

15.1.2

Init.

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work, in accordance with the Contract Documents. Contract Documents are complementary, and what is required by any one Contract Document shall be binding as if required by all; In the event of any conflict or discrepancy among the Contract Documents, such conflict or discrepancy shall be resolved in the following order of priority:

Init.

- A. The Agreement;
- B. Amendments and revisions, if any, of later date take precedence over those of earlier date;
- C. The General Conditions;
- D. The Supplementary;
- E. Drawings and Specifications- Drawings govern Specifications for quantity and location, and Specifications govern Drawings for quality and performance. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern;
- F. Figured dimensions govern scaled dimensions and large scale Drawings govern small scale Drawings; and
- G. Submittals.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Execution of the Contract by the Contractor is a representation that said Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein, to enter into the Contract, to enable it to construct the Work outlined therein and otherwise to fulfill its obligations thereunder, including but not limited to, Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum on or before the date(s) of Substantial Completion established in the Contract Documents, subject to adjustment provided by Paragraphs 7 and 8 of the General Conditions. The Contractor further acknowledges and declares that it has visited and examined the site and examined the surface physical conditions affecting the Work and is familiar with the conditions thereon affecting the same. In connection therewith, Contractor specifically represents to Owner that it has, by careful examination, satisfied itself as to: (1) the nature, location, and character of the Project and the site, including but not limited to conditions of all structures and obstructions thereon and soils and surface water conditions of the site and surrounding area; (2) the nature, location and character of the general area in which the Project is located, including but not limited to its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities or conflicts, it will promptly notify Owner and Construction Manager of such fact.

Further, Contractor recognizes the extra degree of care required under the urban site construction circumstances with respect to safety, protection of pedestrians, cleanliness of the site, health and other laws, and protection of existing utilities adjacent streets and property. In arriving at the Contract Sum and the Contractor Time, Contractor has, as an experienced and prudent contractor, exercised its best judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract Time for providing these safety conditions.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

Init.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Construction Manager shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority.

§ 2.1.2 The Owner shall furnish to the Contractor after receipt of a reasonable written request, a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, a legal description of the site, the name and address of the holder of any security interest in the site of which the Owner is aware, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The furnishing of these surveys and the legal description of the site shall not relieve the Contractor from its duties under the Contract Documents. In addition to the following, if Owner, Architect, and Construction Manager furnishes Contractor with any information concerning subsoil characteristics or conditions of the area where the Work is to be performed, then if Contractor becomes aware of any discrepancies, omissions, ambiguities or conflicts in any such information, Contractor shall promptly notify Owner, Construction Manager, and Architect of such fact. The Contractor may undertake such further investigations and studies as may be necessary or useful to determine subsoil characteristics and conditions of the Site. In connection with the foregoing, Contractor shall put forth his best efforts to determine the approximate location of all utility lines, telephone company lines, and cables, sewer lines, water pipes, gas lines, electrical lines, including buried pipelines and buried telephone cables (locating such utility lines and other lines, pipes, etc..., unless such information has been provided to the Contractor by the Owner, Construction Manager, and Architect) and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. The approximate location of these lines will be notes on a drawing prepared by the Contractor and acknowledged by the Owner. It is understood and agreed that the Contractor is not expected to excavate and

Init.

expose any existing underground lines, cables, pipes, or pipelines, not is the Contractor expected to remove and dispose of any contaminated soils.

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.

§ 2.2.5 Owner shall supply to Contractor, free of charge, two (2) sets of Drawings and two (2) sets of Specifications. The Contractor shall pay the cost of reproduction and of delivery for all additional sets requested by Contractor.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents after proper notice and time to cure, as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness or if such correction cannot be completed within 7 days, then with diligence and promptness until completed, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of additional architectural, engineering, managerial, and administrative services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the reasonable difference to the Owner promptly upon request thereof. In an emergency situation, or if Contractor shall fail to effect repairs or replacements required of Contractor pursuant to its warranties within a reasonable time following notice to Contractor from Owner notifying Contractor of the defects or conditions required to be remedied, Owner may make necessary repairs or replacements covered by Contractor's warranty, Owner shall notify Contractor of the repairs or replacements effected or being effected as promptly as reasonably possible after Owner undertakes same. Promptly thereafter, Owner shall submit to Contractor an itemized list of all materials, equipment, tools, supplies, and other items and labor expended in such repairs or replacements and Owner's good faith estimate of the cost thereof. Contractor shall reimburse Owner for all expenses for such materials, equipment, tools, supplies, and other items and labor to the extent reasonably expended by Owner pursuant to this subparagraph 2.4.1 in effecting repairs or replacements covered by Contractor's warranty. Materials and Work removed in effecting such repairs or replacements shall be preserved and stored, to the extent reasonably practicable, for a reasonable time by Owner for inspection and receipt and – disposition by Contractor, at Contractor's expense, and shall become the property of Contractor upon Contractor's payment for such repairs or replacements. If Contractor does not receive and dispose of any such materials and Work within a reasonable time, Owner may sell or otherwise dispose of the same and the costs and expenses of such sale or disposition, net of any proceeds of sale, shall be paid to Owner by Contractor.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

Init.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 In addition to and not in derogation of Contractor's duties under Subparagraphs 1.2.1 and 1.5.2, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe and evaluate any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor, any errors, inconsistencies or omissions discovered (or which reasonably should have been known), by the Contractor shall be reported at once in writing to the Construction Manager and Owner.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents including the information by the Owner pursuant to Section 2.2.2, relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work and shall observe and evaluate any conditions at the site affecting it. These obligations are for the purpose of facilitating any errors, inconsistencies or omissions discovered (or which reasonably should have been known) by the Contractor shall be reported at once in writing to the Construction Manager and Owner.

§ 3.2.3 The Contractor upon reporting any errors, inconsistencies or admissions discovered in writing shall not perform any Work involved in or effected by such conflict, omission, ambiguity or error, without first obtaining written direction and clarification as to such conflict, omission, ambiguity or error from the Construction Manager and the Owner. In the event the Contractor fails to notify the Construction Manager and the Owner of any error, inconsistency, omission, or conflict discovered or one which should have reasonably been discovered, the Contractor assumes all responsibilities and damages arising from such failure to report. If the Contractor reports any conflict, error, inconsistency or omission to the Owner and the Construction Manager, and proceeds with any work involved in or effected by such conflict, omission, ambiguity or error, without first obtaining written direction and clarification from the Construction Manager and the Owner, the Contractor assumes the risks and all costs associated therewith and the Owner shall have no responsibility to pay the Contractor for performing the work or to grant a Contract Time extension in connection with the work.

(Paragraph deleted)

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, sub-contractors, materialmen, and any other person performing portions of the Work under a Contract with the Contractor or claiming by, through, or under the Contractor for any damages, losses, costs, and expenses resulting from such acts, or omissions. Owner has no contractual relationship with any Subcontractor engaged by the Contractor.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, either by activities or duties of the architect in the architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

Init.

§ 3.3.5 The Contractor shall be responsible for coordinating the Work of the Subcontractors and trades so that the work as a whole will conform to the approved Project Schedule, and any updates thereto and conform to the substantial completion date set forth in the Contract Documents, or as adjusted, and so that the Work will be completed efficiently and expeditiously in accordance with the Contract Documents. This coordination includes, but is not limited to, the following principal items of Work:

1. The Contractor and each of its Subcontractors shall be responsible for examining all drawings, all sections of the specifications, and all items of addenda to inform themselves of the requirements of their part of the work.
2. The Contractor shall supervise the taking of all measurements in the field necessary to ensure the timely fabrication, delivery and proper fitting together of the entire work.
3. The Contractor shall coordinate the Work of the various crafts to eliminate interferences, duplication of work, and unfinished gaps between operations.
4. The Contractor shall require and schedule installation and erection of each trade and craft involved in the work so as to avoid delays due to overlapping and time of starting the work of various trades and lack of erection, or installation, of continuous or underlying work of which installation or erection of work is dependent.
5. The Contractor shall advise all subcontractors and trades as to features of construction required in their work to receive, engage and support parts of other work and of easements and tolerances required.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner or Construction Manager, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Owner reserves the right to demand the removal of any employee deemed unqualified or objectionable.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, City gross receipt, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 The Drawings and Specifications will be submitted to the governing Building Department for "Plan Check" and for "Permit". The corrections thereto required by such Building Department will be performed by the Architect subject to Owner's approval. Owner shall secure and pay for the required building permit and for all other permits and governmental fees, licenses, inspections and related costs, including posting and bearing the costs of bonds, insurance or other sureties required by governmental agencies having jurisdiction over the Work, which permits, fees,

Init.

licenses, inspections and related costs are: legally required at the time when bids are received or negotiations concluded; necessary for proper execution and completion of the Work customarily secured after execution of the Contract

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Construction Manager before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Construction Manager and Architect will promptly investigate such conditions and, if the Construction Manager and Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Construction Manager and Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Construction Manager and Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Construction Manager's and Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 Subject to the Owner's written approval, the Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent full-time superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the Contractor's Project Manager shall be as binding as if given to the Contractor. Owner

Init.

reserves the right to review and approval of the superintendent appointed by Contractor which approval shall not be unreasonably withheld, delayed, or conditioned. In addition, Owner shall have the right, upon notice, to demand that the superintendent or other key personnel retained by Contractor be replaced by Contractor. In the event that Owner does not approve the superintendent initially appointed, or demands replacement of the superintendent or to other key personnel, Contractor shall, within 7 days after notification thereof, replace such individuals with an individual reasonably satisfactory to Owner..

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Construction Manager the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner and Construction Manager has reasonable objection to the proposed superintendent or (2) that the Construction Manager requires additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 Project Schedule. Attached hereto as Exhibit "C" is a Construction Schedule (the "Construction Schedule"). Time is of the essence in the commencement, continuation, and completion of the Work. Contractor expressly agrees and covenants to complete each phase of the Work strictly in accordance with the time for completion of such phase set forth in the Schedule of Completion as amended or extended pursuant to the terms of The Agreement. The Project Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and the Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practical execution of the Work. The Project Schedule shall be a logic network prepared in a critical path method or other sequential network in use within the construction industry and shall depict (i) a sequence of operations mutually agreeable to the Owner and the Contractor; (ii) the critical path activities and timeframes, including, without limitation, the design, all critical submittals for the Owner's approval and timeframes for the Owner's response to such submittals, (iii) the dates of commencement and completion of each of the various stages of Work (including lead time activities, drawing and sample submissions, bidding, awarding subcontracts, manufacturing and shipping); (iv) procurement schedule for all materials and equipment; (v) delivery dates for materials, equipment and (vi) all Work to be performed by separate Contractors. The Subcontractor shall use its best efforts and adequate due diligence to maintain the progress of the Work in accordance with set Project Schedule. Notwithstanding the foregoing, the Project Schedule shall not be revised without the prior written approval of the Owner, which approval shall not be unreasonably withheld, delayed, or conditioned.

§ 3.10.2 Project Schedule Updates. Each updated Project Schedule shall be delivered to the Owner in an electronic format and hard copy.

§ 3.10.3 Project Schedule Compliance. At the time the Contractor presents an updated Project Schedule to the Owner and/or Construction Manager, the Contractor will also provide the then current Project Scheduled so that the updates Project Schedule can be compared to the prior approved Project Schedule. The Owner may elect not to approve any updated Project Schedule and may, instead, require the Contractor to meet and comply with the prior approved Project Schedule by accelerating or otherwise, all at the Contractor's sole cost, unless such updated Project Schedule is consistent with changes in the work as provided for in Article 7 below (including Owner-approved Change Orders) made after the prior approved Project Schedule.

§ 3.10.4 Schedule of Submittals. The Contractor shall prepare and keep current for the Owner's and Construction Manager's and/or Architect's approval, a schedule of submittals which is coordinated with the Construction Schedule, as approved by the Owner, and allows the Owner and Construction Manager and/or Architect reasonable time to review submittals.

§ 3.10.5 Conformance of Schedule. The Contractor shall conform to the most recent schedule approved by the Owner.

Init.

§ 3.10.6 Project Schedule Requirements. In accordance with the requirements of the General Conditions, Contractor shall develop a construction schedule ("Project Schedule") for the Work demonstrating complete fulfillment of all requirements of the Contract Documents, and shall keep the Project Schedule up to date in accordance with the requirement of this Section:

§ 3.10.6.1 The Project Schedule shall be prepared utilizing the Critical Path Method (CPM) and shall demonstrate the Contractor's method of planning, coordinating, and reporting the Work under this Contract:

§ 3.10.6.2 A Project Schedule utilizing the CPM is a time-phased plan detailing the individual activities and the logical interdependence that together describe the complete sequence of events and tasks required to complete the Work;

§ 3.10.6.3 The Project Schedule shall include the start date, end date, duration, lag time, free float and total float for each activity, and

§ 3.10.6.4 The Project Schedule shall be complete, comprehensive and inclusive of all activities tasks, functions, interactions, interdependencies, coordination, and restrictions required to perform the Work.

§ 3.10.7 Contractor is solely responsible for properly managing and executing the Work in accordance with the approved Project Schedule. In the event the progress of the Work is not sufficient to accomplish the approved Project Schedule, or it becomes apparent to the Owner, based on the progress of the Work reported by the Contractor, that the Date of Substantial Completion or the Date of Final Completion will not be met solely because of the actions or inactions of the Contractor, the Owner will have the right to direct the Contractor to take some or all of the following actions, at no additional cost to Owner;

§ 3.10.7.1 Increase construction manpower and/or equipment in such quantities and crafts necessary, in the judgment of the Owner, to substantially eliminate the backlog of work at no additional cost to Owner;

§ 3.10.7.2 Increase the number of working hours per shift, shifts per working day or working days per week as necessary, in the judgment of the Owner, to substantially eliminate the backlog of work at no additional cost to Owner; and/or

§ 3.10.7.3 Reschedule re-sequence and/or accelerate activities as is practical and within the limitations of maintaining a safe working condition, in order to substantially eliminate the backlog of work at no additional cost to Owner.

§ 3.10.8 SCHEDULE UPDATING AND REPORTING

§ 3.10.8.1 The approved Project Schedule shall be updated on a monthly basis or lesser intervals, at no additional cost to the Owner, when reasonably deemed necessary by the Owner for the purpose of recording and monitoring the progress of the Work:

1. The Contractor shall meet with the Construction Manager and Owner each month to review the updated schedule and the scope of each revision, including, but not limited to:
 - a) Actual progress made to date,
 - b) Activities started and completed to date, and
 - c) Percentage of work completed for each activity started but not completed;
2. When directed by the Owner, the Contractor shall update the schedule based on the actual field progress. The Contractor, with Owner's approval, may revise its activity relationships (logic) and duration's in order to maintain the Project Schedule.

§ 3.10.8.2 On a weekly basis, the Contractor shall prepare and update a three-week or four-week look-ahead schedule for utilization by the trade supervisors or superintendents. These schedules shall be submitted to the Owner and Construction Manager and Architect, and the activities reviewed at the weekly progress meetings. The three week look-ahead schedules shall:

1. Be plotted in Gantt chart format and be of such size that all activity numbers and descriptions are clearly legible.

Init.

2. Be sorted by subcontractor responsibility, actual start, early start and total float,
3. Include activity ID, description and float for each activity,
4. Include all activities, completed, in progress and scheduled to start within the three week time frame of the data date, and
5. Include all activities, completed, in progress and having started within the week prior to the data date.

§ 3.10.9 SUBMITALS. Contractor shall prepare and provide updated Project Schedules utilizing CPM and all other schedules required under this Section on 11"X 17" or 8 ½ X 11" Legal Paper, and as directed by the Owner:

1. Submit schedules as required in this section. Submit to Owner, Construction Manager, and Architect .
2. If updates are required; submit one value-line (or photocopy) of the previous schedule, annotated to show required changes, along with the revision date..
3. Contractor shall provide Owner with electronic data files of each schedule update, if requested;
 - a) Files shall be prepared using scheduling software previously approved by the Owner, and
 - b) Contractor shall provide Owner with one licensed copy of the scheduling software used by the Contractor in the preparation of schedule updates.

§ 3.10.10 SCHEDULE MODIFICATION PROCEDURES

Once approved by the Owner, the Project Schedule shall not be modified without prior written approval from the Owner or Construction Manager;

1. In the event modification of the Project Schedule is required, and an adjustment in Contract Sum or Contract Time is permissible under the Contract Documents, Contractor shall submit a request for a Change Order requesting extension of the Contract Time for each event;
2. Extensions of time and all other modification to the construction milestones in the approved Project Schedule shall not be permitted, except through execution of a Change Order by the Owner and the Contractor;
3. In addition to the request for a Change Order, Contractor to notify Owner or Construction Manager if a Change Order or Scope Change will impact the Project Schedule, by quantity of days and to provide reason, only approved delays can be included in the Project Schedule that are on the critical path.
4. Upon notifying Owner or Construction Manager of a change event justifying modifications to the approved Project Schedule, Contractor shall submit all required documentation, including the request for a Change Order and Time Impact Analysis, to the Owner or Construction Manager within five (5) days following such notice (but in no event later than the time periods permitted under Paragraph 15.1.2 of the General Conditions of the Contract);
5. Approval or rejection by Owner or Construction Manager of each request for modification to the approved Project Schedule shall be made within fifteen (15) days following the receipt of each submittal, unless subsequent meetings and negotiations are necessary in the sole judgment of Owner. Upon approval, the Change Order will be executed and the Project Schedule modified accordingly;
6. In no case shall any time extensions be allowed until the schedule continues and is associated with related activities is exhausted; and
7. In the event Contractor does not agree with the decision of Owner or Construction Manager regarding the request for modification to the approved Project Schedule, it may be resolved in accordance with §7.5 and Article 15.

Init.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Construction Manager and/or Architect and shall be delivered to the Construction and/or Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, review and submit for approval to the Architect and cc the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Work undertaken without Owner approved shop drawings may be deemed defective or unacceptable unless agreed upon by Construction Manager and/or Architect.

§ 3.12.8 The Work shall be in accordance with the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals. The Work shall be in accordance with approved submittals, except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of shop drawings, product data, samples, or similar submittals, unless the Contractor has specifically informed the Architect in writing of such deviation at the time of the submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

Init.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Architect's approval of Shop Drawings and the like shall not under any circumstances be constructed as approval from extra work or extra costs.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located. The Owner and authorized representatives and agents of Owner's lender shall be permitted upon reasonable demand to inspect all work, materials, payrolls, personnel records, materials invoices and other relevant data pertaining to the Projects, and shall have the right of entry and full access to the Project and the project documents.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall

Init.

not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the extent not covered by insurance, the Contractor shall indemnify, defend, protect and hold harmless Burbank Housing Corporation, City of Burbank and the Redevelopment Agency, KSD Group, Innobuilding & Consulting, and any other person or entity reasonably designated by Owner, and the officers, directors, shareholders, partners, representatives, agents and employees of each of them (collectively, the "Indemnitee"), from and against all claims, lien claims, demands, cause of action, actions, suits, costs, damages, liabilities, losses and expenses, including , without limitation, attorneys' and consultant's fee and expenses, liabilities, claims, court costs, demands, debts, cause of action, fines, judgments and penalties (collectively, "Liability"), which may arise from or relate to: (a) death or injury to people or damage or injury to property; (b) the sole negligence or willful acts, errors and/or omissions of Contractor, or its agents, employees, Subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable in connection with the performance of the Work; (c) any and all no liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the site of the Project or any portion thereof, or Owner as a consequence of acts or omissions of Contractor, Contractor's Work or agents, Subcontractors, employees, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them; (d) any claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees or its Subcontractor's employees arising out of Work; (e) Contractor's failure to fulfill its obligations under the Contract Documents in strict accordance with its terms, including Contractor's breach of any representation or covenants given in any of the Contract Documents or elsewhere by Contractor; or (f) violation of any local, state, or federal law, regulation or code by Contractor or by any of Contractor's employees, agents, Contractors, subcontractors or suppliers.

The indemnity set forth in this section shall apply during the term of the Contract and shall survive the expiration or termination of the Contract until such time as action against all or any of the Indemnities on account of any matter covered by such indemnity is barred by the applicable statute of limitations.

Such obligations shall not extend to claims, demands, causes of action, actions, suits, costs, damages, liabilities, losses or expenses to the extent such result from the gross negligence or willful misconduct of an Indemnities. Nothing herein shall be deemed to abridge the rights, if any, of the Owner or the Contractor to seek contribution where appropriate. If for any reason, any part of this indemnification shall be in contravention of any statute, ordinance, regulation or rule, or any decision of any court or adjudicatory body, then this indemnification provision shall survive to the fullest extent permitted by law.

§ 3.18.2 Employees. To the extent not covered by insurance, and all claims against any person or entity indemnified under Paragraph 3.18.1 by any employee of the Contractor, any subcontractor or subcontractor or sub-contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable or for the Contractor or any subcontractor or sub-contractor under workers compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 To the extent not covered by insurance, Contractor shall defend each Indemnitee, through counsel reasonably acceptable to such Indemnitee, in any action, proceeding or arbitration brought against the Indemnitee by reason of any such claim described in this Paragraph 3.18. The Indemnitee may participate in any such proceeding with counsel of its choice, which shall be at its own expense, unless (i) the Indemnitor chooses counsel not reasonably acceptable to the Indemnitee, or (ii) the Indemnitor does not pursue with diligence such defense, negotiation, or settlement. The parties shall cooperate fully with each other in connection with the defense, negotiation or settlement of any such legal proceeding, claim or demand. The Indemnitee shall have a right to notice of any settlement, and the Contractor shall not execute or otherwise agree to any consent decree which provides for other than monetary payment without the Indemnitee's prior written consent. Notwithstanding the foregoing, the Indemnitee shall have the right to pay or settle any such claim provided that in such event it shall waive any right to indemnity therefore by the Contractor. In the event that the Contractor elects not to defend or settle such proceeding, claim or demand and the Indemnitee defends, settles or otherwise deals with any such proceeding, claim or demand, which settlement may be

Init.

without the consent of the Contractor, provided that the Indemnatee shall act reasonably and in accordance with its good faith business judgment in connection with any settlement and shall provide fifteen (15) days' written notice of any settlement to the Contractor. Contractor's obligation to defend an Indemnatee shall not extend to any action, proceeding or arbitration which asserts or alleges only that they injury to the claimant resulted from the negligence or misconduct of the Indemnatee..

§ 3.18.4 If any claim, lien, stop notice or any other demand for payment or security therefor, including claims or demands upon performance and payment bond sureties for this Contract, is made or filed with the Owner or against the Project by any person claiming that Contractor or any Subcontractor, supplier or any other person claiming, under any of them has failed to perform its contractual obligation or to make payment for any labor, services, trust fund contributions, materials, equipment, taxes or other item furnished or obligation incurred for, or in connection with, the Work, or if at any time there shall be evidence of such non-performance or non-payment of any claim, lien, stop notice or other demand for which, if established, the Owner of the Project might become liable, as regards to this Project, then the Owner shall have the right to retain from any payment then due or thereafter to become due under the Contract, or to be reimbursed by Contractor, a reasonable amount sufficient to (i) satisfy, any such claim, lien, stop notice or other demand (ii) make good any such nonpayment, nonperformance, damage, failure or default.

§ 3.18.5 Should any Subcontractor, supplier or other person or Contractor or any of them make, record or file, or maintain any action on or inspection a claim of mechanic's lien, stop-notice, equitable lien, payment or performance bond, or a lis pendens, relating to the Work, Contractor shall promptly and at its own expense procure, furnish and record appropriate statutory release bonds which will extinguish or expunge said claim, stop-notice or lis pendens.

§ 3.18.6 In addition to the requirements of any other part(s) of the Contract Documents, Contractor shall ensure by subcontract agreement that each Subcontractor, and each performance bond of, if any, a Subcontractor, shall indemnify, defend, protect and hold harmless the Indemnitees from any and all Liabilities, regardless of whether or not Liability is caused in part by an Indemnatee, in the same manner and to the extent set forth in Section 3.18.1 above. In the event that more than one Subcontractor is connected with an event covered by the indemnity, then all of the Subcontractors, together with the Contractor, are and shall be jointly and severally liable and responsible to each of the Indemnitees for the obligations described therein, and the ultimate responsibility among such indemnifying Subcontractors and/or Contractor for the loss and expense of any such obligations shall be resolved without jeopardy to any Indemnatee.

§ 3.18.7 The Contractor's indemnification obligation under this Paragraph 3.18.7 shall, but not by way of limitation, specifically include any claims and judgments, which may be made against the Owner Indemnified Parties under any "safe place to work" or similar type of statute, similar laws of estate or other governmental body having jurisdiction, and further, any claims and judgments arising from violation of public ordinances and requirements of governing bodies due to the Contractors or Subcontractors' method of execution of the Work.

§ 3.18.8 The indemnity in this Paragraph 3.18 shall survive termination or expiration of this Construction Contract..

§ 3.19 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

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§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Construction Manager will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Contractor issues the final Certificate for Payment. The Construction Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect and Construction Manager will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect and Construction Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect and Construction Manager will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Construction Manager will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect and Construction Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect and Construction Manager will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect and cc to Construction Manager. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner or Construction Manager.

§ 4.2.5 Based on the Construction Manager's observations and evaluations of the Contractor's Applications for Payment, the Construction Manager will review and certify the amounts due the Contractor and will approve Certificates for Payment in such amounts.

§ 4.2.6 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or Construction Manager considers it necessary or advisable, the Architect or Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review so as not to interfere with Construction Schedules set forth in Section 3.10. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12.

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§ 4.2.8 The Contractor will prepare Change Orders and Construction Change Directives, and the Construction Manager may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. All Change Orders and Construction Change Directives shall be binding on the Owner only if approved by Owner.

§ 4.2.9 The Construction Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Construction Manager will interpret and decide matters concerning performance under, and the Architect will decide requirements of, the Contract Documents on written request of either the Construction Manager or Contractor. The Architect's or Construction Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect and Construction Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect and Construction Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise cc Construction Manager with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Construction Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager may reply within 7 days to the Contractor in writing stating (1) whether the Owner and Construction Manager has reasonable objection to any such proposed person or entity or (2) that the Construction Manager requires additional time for review. Failure of the Owner and Construction Manager to reply within the 7-day period shall constitute notice of no reasonable objection.

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§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner and Construction Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner and Construction Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner and Construction Manager has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner and Construction Manager makes reasonable objection to such substitution. The Owner may require the Contractor to change any Subcontractor or any employee of Subcontractor previously approved and, if at such time the Contractor is not in default hereunder, the Contract Sum shall be increased or decreased by the difference in cost to the Owner occasioned by such change.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Construction Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and Construction Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Nothing contained herein shall be deemed to create an agency relationship between the Owner and any Subcontractor or materialman. Any part of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor, which shall be prepared in the form of subcontract which the Owner has approved. Without limitation of Subparagraph 5.3.1, each such subcontract shall:

- a) Require that the Work, or any portion thereof, be performed in accordance with the requirements of the Contract Documents;
- b) Waive all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the builder's all risk insurance described in the Contract Documents;
- c) Require the Subcontractor to carry and maintain liability insurance in accordance with the terms of the Contract Documents;
- d) Require the Subcontractor to furnish such certificates and waivers as Owner's lender may reasonably request prior to the performance of any Work; and
- e) Conform to the requirements set forth in the General Conditions, as supplemented hereby.

At Owner's request, Contractor shall promptly deliver to Owner and Construction Manager a copy of any such subcontract.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

Init.

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

(Paragraphs deleted)

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

(Paragraph deleted)

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

(Paragraph deleted)

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

.1 A Change in the Work which is specifically requested by the Owner, Construction Manager, or Architect and for which there is a material increase or decrease in the scope of the Project, or the time for the Work, and is not implied by or inferred to in the Contract Documents, shall be defined as a "Scope of Change."

.2 A Change in the Work which is unsolicited by the Owner, Construction Manager, or Architect, whether necessitated by plan interpretation of Owner's consultants; which does not constitute a material increase in Project scope, or which is deemed by Construction Manager or Architect as required to comply with the reasonable intent of the Contract Documents, shall be defined as a "Required Change."

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, and Contractor; a Construction Change Directive may be initiated by the Construction Manager and agreed to by the Owner and Contractor for a minor change in the work. A Construction Change Directive shall not exceed \$15,000 of estimated value, without written authorization, prior to the work, for a minor change in The Work.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 Omitted, See Section 7.3.4.

7.1.5 At any time, the Owner or Construction Manager, without invalidating the Contract, order extra Work or make scope changes by altering, adding, or deducting from the Work. However, no extra Work or scope change shall be made unless pursuant to a written Change Order signed by Owner, Construction Manager, and Contractor. A Construction Change Directive as initiated by the Construction Manager shall be deemed as written authorization to proceed with the Work and acknowledgment of payment obligation. However, a written Change Order must be executed prior to payment for the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The mark up for Change Orders and if applicable for Construction Change Directives shall be a total of 3.75% fee, plus insurance of 1.195%, plus Contractor Bond shall be 1.5%, plus applicable Subcontractor Bond amount if Subcontractor was chosen to be bonded by Owner over and above the direct cost of the adjustment in the Contract Sum. This represents the total mark up payable on any Change Order by the Owner and includes the mark up of any subcontractors, material supplier, sub-subcontractor or anyone providing labor, equipment, material or services in connection with any Change Order.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Contractor and signed by the Owner and Construction Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 Subject to Section 7.5 below, a Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be as determined in the Owner's sole discretion based on one of the following methods:

Init.

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7

(Paragraphs deleted)

The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that result in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit which shall not exceed a total of 3.75% for both overhead and profit and which shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and/or Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager determines, in the Construction Manager's and/or Architect's professional judgment, to be reasonably justified. The Construction Manager's and/or Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.9 When the Owner and Contractor agree with a determination made by the Construction Manager and/or Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Contractor will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.10 If a change in the Work is to be ordered, a Supplementary Instruction shall be issued by Construction Manager to Contractor describing the change and requesting the submission of a Change Order Request. When time does not permit the processing of a Change Order in advance of commencing the change in the Work, then, only upon receipt of a Construction Change Directive approved by Owner or Construction Manager, Contractor shall proceed with a change in the Work, and Contractor shall concurrently proceed with submission of a Change Order Request.

§ 7.3.11 Within seven (7) days of Contractor's receipt of a Supplementary Instruction or Construction Change Directive, Contractor shall provide a preliminary estimate of any change in Contract Sum or Contract Time associated with the change described in the Supplementary Instruction or Construction Change Directive. Within fifteen (15) days following receipt of a Supplementary Instruction or Construction Change Directive, Contractor shall submit a Change Order Request to Owner together with the revised or new documents which, if approved by Owner, will become part of the Contract Documents setting forth any requested adjustment in the Contract Sum or the Contract Time, and including any itemization of all costs of material and labor with extensions listing quantities and total costs, and a substantiation of any Claim for an extension of the Contract Time. If no Change Order Request is submitted by Contractor within such period it shall be conclusively presumed that the change described in the Supplementary

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Instruction or Construction Change Directive does not call for any Work that will result in an increase in the Contract Sum or the Contract Time, and such change shall be performed by Contractor without any such increase. If Contractor is unable to submit the above information within the time limit, then prior to the expiration of such time limit, Contractor shall notify Owner in writing, setting forth for Owner's approval a date by which Contractor will submit the information as well as a schedule for the performance of the Work for which a Change Order Request will be forthcoming.

§ 7.3.12 If Owner accepts a Change Order Request submitted by Contractor, then Contractor shall prepare a Change Order that is based upon such Change Order Request for execution by Contractor and Owner, and the Contract Sum and the Contract Time shall be adjusted as provided in the Change Order. Notwithstanding anything to the contrary contained in the Contract Documents, if Owner rejects a Change Order Request submitted by Contractor, then the parties shall have fourteen (14) days after Contractor receives notice of such rejection in which to agree upon a revised Change Order Request. If the parties are unable to agree on a revised Change Order Request within such fourteen (14) day period, then unless Contractor submits such matter for resolution in accordance with the terms of Article 4 hereof within seven (7) days after the expiration of such fourteen (14) day period. Contractor shall be deemed to have waived its right to make any Claim relating to the subject matter of the rejected Change Order Request.

§ 7.3.13 Nothing contained herein shall limit the right of the Owner to order changes in the Work by Change Orders that have not been signed by Contractor, and Contractor shall promptly perform all Work required under the Contract Documents or a Change Order despite its referral to accept or execute the Change Order.

§ 7.3.14 No change in the Work shall be the basis of an addition to the Contract Sum or a change in the Contract Time unless and until such change has been authorized by a Change Order executed and issued in accordance with the Contract Documents. Changes in the Work may be made without notice to Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to Owner.

§ 7.3.15 Additional Personnel. Notwithstanding anything to the contrary contained in the Contract Documents, in the event of any Owner- approved Change Order or Construction Change Directive which would otherwise result in an adjustment to the Contract Time, then Owner may elect to require Contractor to increase the number of personnel and laborers on the Project, and/or implement overtime and double shifts (including, if reasonably necessary, weekend or holiday shifts) as may be reasonably required for completion of the various phases of the Work, as well as the totality of the Work, within the period of times set forth as the original Contract Time. Owner shall reimburse Contractor for all additional actual costs and expenses (as defined in Subparagraph 7.3.6) reasonably incurred in connection with such additional personnel, overtime or double shifts, and a corresponding addition shall be made to the Contract Sum and such additional amount shall be paid pursuant to the term hereof § 7.3.10. If the Contractor performs any work it believes should result in an adjustment in the Contract Sum or in an adjustment in the Contract Time without first obtaining written direction to perform that work from the Owner either in the form of a (1) Change Order, or (2) a Construction Change Directive or without first submitting a (3) Notice of Claim pursuant to § 15.1.2 below, the Owner shall have no obligation whatsoever to (1) pay the Contractor for such work or (2) to provide an adjustment in the Contract Sum or (3) to provide an adjustment in the Contract Time. The Contractor's compliance with this subparagraph 7.3.10 shall be a condition precedent to recover on any legal or equitable theory seeking additional money, additional Contract Time or relief from liquidated damages based on any change in the progress, sequence, plan, schedule, scope or conditions of the Work required in the Contract Documents or additional performance time based in any change in the Work.

§ 7.4 MINOR CHANGES IN THE WORK

The Construction Manager has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Construction Manager and shall be binding on the Owner and Contractor.

§ 7.5 DISPUTED WORK

§ 7.5.1 If the Owner and the Contractor are unable to agree in writing as to whether the Contractor asked to provide labor, equipment, materials, or services which should result in an adjustment in the Contract Sum, or in the Contract Time, the Contractor shall notwithstanding the dispute shall if directed to do by the Owner perform the Disputed Work in question and complete the same. Before commencing with the Disputed Work, the Contractor shall submit a Notice of Claim pursuant to 15.1.2 below. After the Contractor has fully completed the disputed work in question, and after

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the Architect has issued a final Certificate for Payment, the Contractor shall submit its Claim pursuant to 15.1.1 below, and a quantification thereof for resolution pursuant to the terms of Article 15. Under no circumstances will the Contractor be excused from performing the Disputed Work in question as required by this Paragraph 7.5. The Contractor's compliance with 7.5 is a condition precedent to receiving any payment for any of the Work performed under the Contract Documents.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 Subject to Section 3.10 and without limitation, Paragraphs 2.10.10 and 3.10.11, if the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Construction Manager or Architect, or of an employee of any of them, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by occurrences beyond the control and without the fault or negligence of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including labor disputes (other than disputes limited to the work force of, or provided by, the Contractor or its Subcontractors), fire, unusual delay in deliveries, not reasonably anticipated, unavoidable casualties, adverse weather conditions not reasonably anticipated, or by other occurrences which the Construction Manager, subject to the Owner's reasonable approval, determines may justify delay, then provide that the Contractor (a) is in compliance with Subparagraphs 4.3.3 hereof, and (b) the Contractor presents to Owner and Construction Manager a written request for an extension in the Contract Time no later than ten (10) days after the occurrence of the event causing delay, the Contract Time shall be extended by Change Order or Construction Change Directive for the length of time actually and directly caused by such occurrence as determined by the Construction Manager and approved by the Contractor and Owner (such approval not to be unreasonably withheld, delayed or conditioned); provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of the Contractor. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Construction Manager and/or Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal. Extensions of time provided for the completion of the Work and compensation for actual costs if incurred and substantiated by Contractor shall be the Contractor's remedy for delay (except for the Contractor's right to terminate the Contract pursuant to the provision of Paragraph 14 hereof), unless the same shall have been caused by an act constituting intentional interference by Owner with Contractor's performance of the Work and where such acts of the Owner continue after Contractor's notice to Owner of such interference. The Owners exercise of any of its rights under the Contract, including, without limitation, its rights under Paragraph 7 (Changes in the Work), or the Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractors performance of the Work. Failure to request additional time in the manner provided for herein shall

Init.

constitute a waiver by Contractor of any right to subsequently claim an adjustment in the Contract Time by reason of such events. In the event that Owner and Contractor fail to agree to any claim adjustment in the Contract Time, Contractor, upon written notice thereof from the Owner, shall immediately proceed to complete the Work and Work changes, and each party shall maintain all rights, remedies and claims with respect thereto.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

(Paragraph deleted)

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Upon the earlier to occur of (i) request by Owner or Construction Manager or, (ii) the Contractor's Application for payment, the Contractor shall submit to the Construction Manager and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Owner may require. This schedule, unless objected to by the Construction Manager and Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least seven days before the date established for each progress payment, ordinarily the 1st of each month, if otherwise agreed to, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work.

Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Construction Manager may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents and shall be accompanied by signed Unconditional Waivers and Releases on progress payments from each Subcontractor, person or entity listed in connection with the preceding periods Application for Payment and Conditional Waivers and Releases on progress payments from each Subcontractor, person or entity listed on the current Application for Payment. Such lien waivers and releases shall be signed by Contractor and such Subcontractors and suppliers as Owner may require and such releases/waivers shall be effective except for those conditional releases signed in connection with this Application for Payment. All work for which an Application for Payment has been previously issued and payments received from Owner shall be free and clear of stop notices and any and all encumbrances in favor of Contractor, Subcontractors, material and equipment suppliers, or other person or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. All stored items shall be stored in a bonded warehouse, inventoried, and if applicable, specified by identification numbers, otherwise all risk of loss remains with Contractor. Contractor's final Application for Payment shall be accompanied by unconditional mechanics' lien waivers and releases in statutory form, and signed by Contractor and such Subcontractors and suppliers as Owners may require.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and/or Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Construction Manager will, within 7 days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Construction Manager determines is properly due, or notify the Contractor and Owner in writing of the Construction Manager's reasons for withholding certification in whole or in part as provided in Section 9.5.1, if not approved for payment by Construction Manager.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Construction Manager to the Owner, based on the Construction Manager's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Construction Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Construction Manager is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Construction Manager cannot agree on a revised amount, the Construction Manager will promptly issue a Certificate for Payment for the amount for which the Construction Manager is able to make such representations to the Owner. The Construction Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be reasonably necessary in the Construction Manager's opinion to protect the Owner from loss for which the Contractor is responsible on this Project, including loss resulting from acts and omissions, of the Contractor or because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents
- .8 failure of the Contractor to provide an appropriate Project Schedule or an appropriate schedule update pursuant to Section 3.10; and
- .9 failure of the Contractor to comply with the provisions of Section 7.5.

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§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Construction Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Construction Manager will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Contractor has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Construction Manager and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Construction Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 The Owner shall have the right, but not the obligation, to issue payment by joint checks payable to the order of the Contractor and any Subcontractor, Sub-subcontractors or materialmen utilized by the Contractor.

§ 9.6.9 If Contractor disputes any determination by the Construction Manager with regard to any Certificate for Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work. If the Construction Manager declines to certify payment and withholds its Certificate for Payment for any reason, the Construction Manager will promptly notify the Owner in writing of such reasons therefor.

§ 9.6.10 Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents or if the Work in question shall have been rejected by any governmental authority.

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§ 9.7 FAILURE OF PAYMENT

No sum shall be added to the Contract Sum as a result of a bona fide dispute between Owner and Contractor. Notwithstanding anything to the contrary contained herein, if Owner is delayed in making any payments within the time frames provided in the Contract Documents solely as a result of failure by Owner's lender to timely approve and/or fund any request for payment, then neither Owner nor Contractor shall be in default of any of its obligations hereunder, and each party shall continue to perform its obligation hereunder.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 The project shall be deemed to have achieved "Substantial Completion" when all of the following have occurred:

- a) The Construction Manager has issued a Certificate of Substantial Completion (AIA Form G704 or the equivalent);
- b) The project or, in the case of a phased project, specific units in a particular phase, are capable of being beneficially occupied for their intended use;
- c) A certificate of occupancy or the equivalent governmental permit has been issued that allows the Project or the units in a particular phase, as applicable, to be leased and occupied; and
- d) A substantial completion notice has been filed with the appropriate County Records Office.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Construction Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Construction Manager and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Construction Manager's and Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Construction Manager. In such case, the Contractor shall then submit a request for another inspection by the Construction Manager and Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Construction Manager will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Construction Manager and cc Architect as provided under Section 9.8.2. Consent of the Contractor to

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partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Construction Manager and Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, Construction Manager, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 The project shall be deemed to have achieved "Final Completion" when all of the following have occurred:

- a) The Construction Manager has issued a Final Certificate for Payment;
- b) All punch list items have been completed to the satisfaction of the Construction Manager and Architect and the Owner;
- c) Owner has received full and final conditional lien waivers from the Contractor and Subcontractors and material suppliers, irrespective of tier, together with a Contractor's affidavit or sworn statement covering all Work for the project;
- d) A final completion notice has been filed with the appropriate County Recorders Office; and
- e) Contractor has submitted all close-out documents, as-built plans and warranties to Construction Manager and Owner, see 9.10.2 below.

§ 9.10.2 Neither the final payment nor the remaining retained percentage nor any cost savings shall become due until:

- (a) the Contractor submits to the Construction Manager (i) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate (ii) consent of surety, if required under the terms of the surety contract, to final payment, (iii) other data establishing payment or satisfaction of all such obligations, including without limitation, receipts, unconditional releases and waivers of liens, for those Subcontractors, Sub-Subcontractors and vendors whose lien rights exist at the Final Completion, to the extent and in such form as may be designated by the Owner, (iv) all necessary building permits and approvals (including, without limitation, Certificates of Inspection and Occupancy) related to the construction of the Work, (v) all written warranties required under the Contract Documents, (vi) one reproducible record copy of all Contract Documents and other documents relating to the Work, including, without limitation, all Drawings, Specifications, Addenda, Change Orders and other Modifications, recording all changes made during construction, (vii) a complete file of Operation and Maintenance Manuals of equipment and materials as specified, and (viii) evidence satisfactory to the Owner that the liability insurance carried by the Contractor pursuant to Subparagraph 11.1.1 will remain in effect for the period required by the Contract Documents and will cover any and all future claims relating to the period of construction (including any corrective work performed by the Contractor pursuant to Paragraph 12.2);
- (b) the Contractor provides, to the Owner's satisfaction, all instruction sessions as specified in the Contract Documents; and
- (c) forty-five (45) days have elapsed following the Owner's recordation of a Notice of Completion, which Notice of Completion shall be recorded by the Owner promptly after the Construction Manager issues the final Certificate for Payment. Payment of retainage by Owner shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Construction Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for

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that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Construction Manager and/or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Construction Manager and/or Architect.

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§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Improvements on the site, Work in progress, stored materials and public and private improvements on property adjacent to the site shall be protected by Contractor from damage arising from the Work. All damage so occurring shall be repaired or damaged items replaced by the Contractor at no cost to Owner.

§ 10.2.9 Prior to starting the Work, the Contractor shall inspect the site and report in writing to Construction Manager and Owner all damage and unsatisfactory conditions existing at such time. The nature and extent of such conditions will be verified by the Construction Manager or Owner, and Contractor will not be held responsible for correcting such damage or such unsatisfactory conditions upon completion of the Work, unless included in the Contract by mutual consent.

§ 10.3 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

(Paragraphs deleted)

§ 10.4 HAZARDOUS MATERIALS

§ 10.4.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents and/or compliance with any requirements, in any statute, code, ordinance or any requirements at law regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.4.2 Upon receipt of the Contractor's written notice, the Owner shall obtain and pay for the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner or Construction Manager shall furnish in writing to the Contractor, and Architect and Consulting Engineers the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Construction Manager and/or Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If the Contractor or Construction Manager and/or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Construction Manager and/or Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.4.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.4.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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§ 10.4.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.4.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.5 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, from insurance carriers rated not less than A X by the latest A.M. Best key rating guide, such insurance as will protect the Contractor and Owner from claims, including but not limited to those set forth below, which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts of them may be liable:

- .1 Claims for statutory workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed covering all Employees of Contractor. Claims for Employer's Liability in an amount not less than ONE MILLION DOLLARS (\$1,000,000) each accident or disease;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees; coverage obligation under this section 3 includes claims of injury or damage to employees of any subcontractor (also referred to as "third party over actions") Contractor shall provide a limit of liability for this risk not less than the coverage limit required from Contractors General Liability in 4 below;
- .4 Claims for damages insured by Commercial Liability insurance, including bodily injury and property damage for premises and operations, personal and advertising injury and loss resulting from the hazards of explosion collapse and underground operations (XCU) in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) each occurrence and FIVE MILLION DOLLARS (\$5,000,000) annual aggregate. Contractor's deductible shall not exceed \$10,000 without Owner's prior written approval;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) each occurrence and FIVE MILLION DOLLARS (\$5,000,000) annual aggregate;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle, including any auto owned, non-owned or hired in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit;
- .7 Claims for bodily injury or property damage arising out of completed operations in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) each occurrence and FIVE MILLION DOLLARS (\$5,000,000) annual aggregate; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18. in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) each occurrence and FIVE MILLION DOLLARS (\$5,000,000) annual aggregate.

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§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, including any warranty or corrective work to be carried out by any of its subcontractors after the work has been accepted by Owner as complete. If Contractor's insurance protection carries optional deductibles, Contractor shall indemnify Owner for the value of such deductible, so that protection is provided in the same way as if first dollar coverage were provided. All liability protection provided by Contractor herein or attached hereto by addendum shall be primary to Liability protection carried by Owner, if any, and liability protection carried by Owner shall be excess.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies shall not be canceled nor allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished to Owner by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include endorsements to Contractor's policy naming: Burbank Housing Corporation, Burbank Redevelopment Agency and the City of Burbank, KSD Group, Innobuilding & Consulting, as additional insured for claims arising from Contractors activities under this agreement. Additional insured endorsements shall include, without limitation, premises liability, ongoing operations and completed operations and shall not be limited to the negligence of Contractor or its subcontractors.

§ 11.1.5 Contractor shall require proof of insurance of the same kind and coverage, as required in 11.1.1 including subsections 1,2,3,4,5,6,7 and 8, in an amount not less than ONE MILLION (\$1,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000) annual aggregate from all tiers of Subcontractors. Contractor may include subcontractors under a Contractor Controlled insurance Program ("CCIP"), subject to owner's written approval of the CCIP's conditions and limits, as adequate for all enrolled parties and covered locations combined. No CCIP Plan shall include the Contractor and all Subcontractors as named insureds (enrollees) under insurance supplied by Contractor. Owner and Owner's designees shall have additional insured status on all such coverage. All additional insured endorsements provided by Contractor or Subcontractor, whether provided under Subcontractor's regular insurance program or a Contractor's CCIP, shall be acceptable to Owner and provide additional insured protection from premises liability (operations), completed operations exposures (your work) and personal and advertising injury. Additional insured endorsements provided by Contractor under any CCIP or provided by Subcontractor shall not limit their insurance company's obligation to defend or indemnify Owner or its designees to Contractor's or Subcontractor's negligence. Contractor shall require insurance provided by any tier of Subcontractor to be endorsed as primary insurance and specifically agreeing any liability (general liability, business automobile liability and employer's liability) insurance carried by Contractor, Owner, Owners investor and Owner's Lenders is excess only.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner and, Contractor, as those interests may appear.

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§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. However, Contractor shall be solely responsible for insuring its own tools and equipment, rented or owned as well as falsework and cribbing comprised of non-consumable materials, which can be reused; these shall be considered Contractor's "tools and equipment" for the purpose of this agreement.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 The property insurance deductibles are the responsibility of the Owner and shall not exceed ten thousand dollars (\$10,000) per occurrence..

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. Coverage for portions of the work stored off the site shall be limited to \$200,000 per occurrence. Coverage for portions of the work in transit shall be limited to \$200,000 per occurrence. Exposure to loss exceeding these limits shall be the responsibility of the Contractor, unless Contractor provides two working days (48 hours) written notice to Owner of the need for higher limits, to afford Owner the opportunity to amend the protection level provided by its builder's risk policy.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.1.6 Contractor shall meet Owner's insurance policy which specifically include, at minimum: a six-foot fence encompassing the entire site that is locked when the property is unattended, lights on each floor of the building interior during dark hours, a licensed and insured watchperson for all non-working hours and a 45 minute site observation, conducted by Contractor or subcontractor, following the completion of any "hot work" to observe any evidence of smoke or fire. Contractor shall also utilize a "hot work" permit system as required by the Fire Code, NFPA or Owners property insurance Underwriter. Other site protection may become necessary by Owner's insurance carrier recommendation. It is agreed that additional protection or risk management practices will be carried out by Contractor, at Owner's expense, if deemed necessary.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner, at the Owner's option, may purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, and Contractor.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused, to the extent covered by loss of use insurance.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 At Contractor's request, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. Owner shall have the right to review and approve the form of waiver endorsement provided by Contractor's Insurer prior to the commencement of any work under this agreement. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner.

§ 11.3.9 The Owner shall have power to adjust and settle a loss with insurers.

(Paragraph deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract only.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work reasonably rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such reasonably rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. This obligation under Subparagraphs 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall, at Contractor's expense, remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Notwithstanding the foregoing, Owner may assign its rights

Init.

hereunder to its lender or any entity affiliated with the Owner. Any entity which shall succeed to the rights of Owner shall be entitled to enforce the rights of Owner hereunder.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.4.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and/or Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and/or Architect may be present for such procedures.

§ 13.5.2 If the Construction Manager and/or Architect, Architect's consultants, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and/or Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and/or Architect of when and where tests and inspections are to be made so that the Construction Manager and/or Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager and Architect.

§ 13.5.5 If the Construction Manager and/or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager and/or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

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§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Paragraphs deleted)

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Construction Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner constitute in the aggregate more than 50 percent of the total number of days scheduled for completion, or 60 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and costs incurred by reason of such termination. In the event of termination by the Contractor, under no circumstances shall the Contractor recover lost profits on the portion of the Work that was not completed and/or executed by virtue of the termination, nor shall the Contractor be entitled to recover any damages arising from the termination unless said damages are proven pursuant to the Contract Documents, including without limitations, Section 3.10 and unless the Contractor has complied with the provisions of the Contract Documents, including without limitation, Article 7.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon 14 additional days' written notice to the Owner, Construction Manager, and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor with proper written notice and opportunity to cure:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

Init.

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds all construction costs of finishing the Work, such excess shall be paid to the Contractor. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 Notwithstanding anything to the contrary contained in the Construction Documents, the Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 Subject to Sections 3.10, 7.5 and Article 8 of the General Conditions, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 Owner may, at any time, terminate the Contract in whole or in part for Owner's convenience and without cause. Termination by Owner under this paragraph shall be by written notice of termination given to Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of the written notice of termination to Contractor shall immediately, in accordance with Owner's instructions, proceed with performance of the following duties:

- .1 cease operations as directed by the Owner in the notice;
- .2 place no further orders and enter into no further subcontracts for materials, labor, services or facilities;
- .3 unless otherwise specified, terminate all subcontracts and orders to the extent that they relate to Work so terminated;
- .4 complete the performance of Work not terminated; and
- .5 take such other actions as may be necessary or requested by Owner for the protection and preservation of the terminated Work.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be paid:

- .1 for work performed on the terminated portion of the Work before the effective date of termination, for lump sum and Allowance items, or, for unit costs, based upon units performed before the effective date of termination. In addition, Contractor shall be paid the cost of settling and paying termination costs under terminated subcontracts or properly chargeable to the terminated portion of the Work."
- .2 reasonable costs directly related to such termination as described in detail in invoices and descriptions provided by Contractor and as approved by the Construction Manager; and
- .3 if Contractor would have earned a profit under the Contract had the Work been completed, a pro rata portion of such profit based upon the percentage of completion of the Work as of the effective date of

Init.

termination.

.4 if the contract is terminated by Owner for convenience during the first 25% of Work according to the Schedule Values, Contractor shall be paid 50% of Contractors Overhead and Fee and the remainder owing on the first five months of its lump sum then calculated General Conditions. If Contract is terminated by owner for convenience after more than 25% completion according the Schedule Values, Owner will pay Contractor 100% of all Contractor's Overhead and Fee, and 100% of the remaining lump sum General Conditions as then calculated.

§ 14.4.4 In determining amounts due Contractor under this Paragraph 14.4, Owner shall be credited for payments previously made to Contractor for the terminated portion of the Work and claims which Owner had against Contractor under the Contract, and for the value of materials, supplies, equipment or other items to be disposed of by Contractor that are covered under the Contact Sum.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7, 7.5 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents, except where the Owner's excused for making further payment as provided for in Section 9.5.1. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

Subject to Section 7.5, if the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall be submitted in full compliance with Section 3.10. In the case of a continuing delay, only one claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

Init.

- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, and 11.3.9, shall be referred to the Initial Decision Maker for initial decision. The Construction Manager will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Construction Manager, if the Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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§ 15.5 AUDIT AND ACCOUNTING RECORDS

§ 15.5.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract Documents, and the accounting control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, at Owners expense, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data related to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ 15.5.2 All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors retained by the Contractor shall have the same obligations to obtain records and cooperate auditors. If any inspection by the Owner of the Contractor's records, books, correspondence, instructions, drawings, vouchers, memoranda, or any other data related to the Contract Documents reveals an overage, the Contractor shall pay the Owner upon demand, the amount required by law, including without limitation, the Federal and State False Claim Acts, for reimbursement for said overcharge and the administrative expenses incurred in determining the overcharge.

ARTICLE 16 ADDITIONAL PROVISIONS

§ 16.1 In connection with each disbursement on account of any hard cost item due, an amount (the "Retainage") equal to ten percent (10%) of that portion of the Contract sum allocable to each portion of the Contract. The Retainage, less any deductions from the Contract sum provided for under the Contract, shall be paid upon Final Completion of the Work. Notwithstanding the foregoing, if a portion of the Work cannot be completed because weather conditions prevent the completion of certain exterior work (e.g., landscaping or exterior concrete) ("Exterior Items"), Retainage shall be disbursed less one hundred fifty percent (150%) of the sum the Construction Manager reasonably determines to be allocable to the completion of the Exterior Items. If Contractor fails to complete the Exterior Items by the agreed date, Owner may use the Retainage to complete such Items and the Contractor forfeits all rights to such Retainage.

§ 16.2 Notwithstanding anything to the contrary contained herein or any other Contract Documents, Contractor agrees to cooperate with Owner in order to facilitate Owner's receipt of financing and other funding for the Work. Such obligation shall include, but not necessarily be limited to, the preparation execution and deliver by Contractor to Owner, upon Owner's request, of an estoppels certificate, certifying, among other things (i) that the Contract Documents are in full force and effect and have not been assigned, modified, supplemented or amended in any way, or describing any such assignment, modification, supplement or amendment in reasonable detail, and (ii) that all conditions under said Contract Documents to be performed by Owner have been satisfied, all payments for Contractor's Work have been paid in accordance therewith, and that as of the date of the estoppel certificate there are no existing defenses or offsets which the Contractor has against the enforcement of said Contract Documents by Owner, or in the event that Owner has failed to pay any sum or otherwise perform in accordance with the terms of the Contract Documents, Contractor shall describe such failure in reasonable detail. In addition, upon Owner's request, Contractor shall execute, cause to be acknowledged if required, and deliver (and cause any Subcontractor, materialman or other supplier to execute, acknowledge if required, and deliver) any documentation reasonably requested by any party providing or proposing to provide funding for the Work, for the purpose of clarifying the relative priority of each such party's interest in the Project or the site on which the Project is being performed.

§ 16.3 Owner reserves the right to appoint a construction manager at any time during the construction of the Project. Owner shall retain the right to replace or to discharge entirely such construction manager at any time. The appointment of such construction manager shall not in any way modify, alter or otherwise change the rights and obligations of Contractor as described in the Contract Documents, except as Owner may expressly notify Contractor to the contrary at the time such construction manager is appointed.

§ 16.4 The parties agree that the relationship of Contractor shall be that of an independent contractor to Owner. Nothing contained herein or inferable herefrom shall be deemed or constructed to (i) make Contractor the agent, servant or employee of the Owner, or (ii) create any partnership, joint venture or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 16.5 Should either party hereto bring any action under any of the Contract Documents, including, without limitation, an action of Arbitration in accordance with Paragraph 4.5 of the General Conditions, any adjustment

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awarded shall include reasonable attorney's fees and other costs incurred in bringing disputed matters before the arbitrators or a court.

§ 16.6 The Contract Documents are contingent upon (a) Owner's receipt of construction financing acceptable to Owner in its sole discretion and (b) the approval of the Contractor and this Agreement by Owner's lender. In the event that such financing and/or approval is not received, Owner shall notify Contractor and this contract and the other Contract Documents shall immediately terminate and be of no further force or effect, in which case Owner shall not be obligated to pay Contractor for any cost, liability or other expense which Contractor may incur in connection herewith or with any of the other Contract Documents. In accordance with Paragraph 3.18.1 of the General Conditions, Contractor shall indemnify, defend, protect and hold harmless the Indemnities from and against all claims, lien claims, demands, causes of action, liabilities, damages, losses and expenses including, without limitation, attorneys' and consultant's fees and expenses which an Indemnities may incur with respect to any Subcontractor, materialman or other supplier as a result of any Work performed or material's supplied at any time prior to Owner's termination of the Contract Documents, in accordance with the terms of this Paragraph. Except with regard to prior written agreement, Owner will not issue a Notice To Proceed pursuant to AIA 102 Article 4.1 until written notice to Contractor of removal of this financing contingency.

§ 16.7 The Agreement shall be constructed to be in accordance with, and governed by, the laws of the State of California.

§ 16.8 The Contractor shall maintain full and detailed books, records and accounts and exercise such controls as may be necessary for proper financial management under this Contract. The Owner and the Owner's authorized representatives shall be afforded access to, and shall have the right to audit, the Contractor's records, books,, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve such documents for a period of three (3) years after final payment, or for each longer period as may be required by law. If any such audit or review reveals that Contractor has overcharged Owner, then within ten (10) days after Owner's demand therefor, Contractor shall reimburse Owner for the amount of such overcharge. Owner shall pay the cost of such audit; provided, however, that if the audit reveals that the Contractor has overcharged Owner by an amount in excess of two percent (2%), then Contractor shall pay the cost of such audit. No payment made by Owner pursuant to the terms of this Contract shall be deemed to constitute a waiver of the Owner's right to audit or subsequently contest the validity of any such billing, invoice or other charges on which the payments are based.

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RCI Builders Inc.

Plan Attachment

Record# 498 to 498

EXHIBIT "A"
CONTRACT DOCUMENTS

Plan # 1119-10R

Addendum A Set

Issued: 12/23/2011

Reference	Description	Drawing Date	Recieved Date	Architect
A01.01	Site Demo Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A01.02	Site Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A02.00	First Flr. Conc Slab Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A02.01	Parking Level Plan	12/05/2011	12/06/2011	Pablo Maida Architect
A02.02	First Floor Plan	12/05/2011	12/06/2011	Pablo Maida Architect
A02.02D	First Floor Dimension Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A02.03	Second Floor Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A02.03D	Second Floor Dimension Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A02.04	Roof Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A02.05	Enlarged First Floor Plans	10/10/2011	10/19/2011	Pablo Maida Architect
A02.06	Enlarged First Floor Plans	10/10/2011	10/19/2011	Pablo Maida Architect
A02.07	Enlarged First Floor Plans	10/10/2011	10/19/2011	Pablo Maida Architect
A02.08	Enlarged Second Floor Plans	10/10/2011	10/19/2011	Pablo Maida Architect
A02.09	Enlarged Second Floor Plans	10/10/2011	10/19/2011	Pablo Maida Architect
A02.10	Enlarged Second Floor Plans	10/10/2011	10/19/2011	Pablo Maida Architect
A02.20	Trellis Enlarged Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A02.21	Trellis Enlarged Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A03.01	Parking Reflected Ceiling Plan	10/10/2011	10/19/2011	Pablo Maida Architect
A03.02	First Floor Reflected Ceiling	10/10/2011	10/19/2011	Pablo Maida Architect
A03.03	Second Floor Reflected Ceiling	10/10/2011	10/19/2011	Pablo Maida Architect
A04.01	Exterior Elevations	10/10/2011	10/19/2011	Pablo Maida Architect
A04.02	Exterior Elevations	10/10/2011	10/19/2011	Pablo Maida Architect
A04.03	Exterior Elevations		10/19/2011	Pablo Maida Architect
A05.01	Building Sections	12/05/2011	12/06/2011	Pablo Maida Architect
A06.01	First Floor Interior Elevation	10/10/2011	10/19/2011	Pablo Maida Architect
A06.02	First Floor Interior Elevation	10/10/2011	10/19/2011	Pablo Maida Architect
A06.03	First Floor Interior Elevation	10/10/2011	10/19/2011	Pablo Maida Architect
A06.04	1st & 2nd Flr Interior Elev	10/10/2011	10/19/2011	Pablo Maida Architect
A06.05	1st & 2nd Flr Interior Elev	10/10/2011	10/19/2011	Pablo Maida Architect
A06.06	Interior Elevations	10/10/2011	10/19/2011	Pablo Maida Architect
A-08.01	Door Schedules	10/10/2011	10/19/2011	Pablo Maida Architect
A-08.02	Window Schedules	10/10/2011	10/19/2011	Pablo Maida Architect
A-09.01	Wall Sections	12/05/2011	12/06/2011	Pablo Maida Architect
A-09.02	Wall Sections	12/05/2011	12/06/2011	Pablo Maida Architect
A-09.03	Wall Sections	12/05/2011	12/06/2011	Pablo Maida Architect
A10.00	Wall Types	12/05/2011	12/06/2011	Pablo Maida Architect
A-10.01	Details	12/05/2011	12/06/2011	Pablo Maida Architect
A-10.02	Details	12/05/2011	12/06/2011	Pablo Maida Architect
A-10.03	Details	12/05/2011	12/06/2011	Pablo Maida Architect
A-10.04	Details	12/05/2011	12/06/2011	Pablo Maida Architect
A-10.05	Details	12/05/2011	12/06/2011	Pablo Maida Architect

EXHIBIT "A"

CONTRACT DOCUMENTS

01/19/12

Continued...

Reference	Description	Drawing Date	Recieved Date	Architect
A-10.06	Details	12/05/2011	12/06/2011	Pablo Maida Architect
A-10.07	Details	12/05/2011	12/06/2011	Pablo Maida Architect
A-10.08	Details	12/05/2011	12/06/2011	Pablo Maida Architect
A-10.09	Details	10/10/2011	10/19/2011	Pablo Maida Architect
A-10.11	Enlarged Stair Plans & Section	10/10/2011	10/19/2011	Pablo Maida Architect
A-10.12	Enlarged Stair Plans & Section	10/10/2011	10/19/2011	Pablo Maida Architect
A-10.13	Enlarged Elevator Plans/Seccio	10/10/2011	10/19/2011	Pablo Maida Architect
C-1	Finished Grading & Utility	12/07/2011	12/07/2011	Paller-Roberts Engineering
C-2	Erosion Control Plan	12/07/2011	12/07/2011	Paller-Roberts Engineering
C-3	Notes, Legend & Site Details	12/07/2011	12/07/2011	Paller-Roberts Engineering
C-4	Stan Urban Stormwater Mitigati	12/07/2011	12/07/2011	Paller-Roberts Engineering
C-5	City of Burbank Standard Plans	12/07/2011	12/07/2011	Paller-Roberts Engineering
E00.01	Legend, Gen Notes, Lighting	10/10/2011	10/19/2011	Storms & Lowe
E01.00	Electrical Site Plan	10/10/2011	10/19/2011	Storms & Lowe
E01.01	Enlarged Elec Room in Basement	10/10/2011	10/19/2011	Storms & Lowe
E01.02	Elec Single Line & Load Calcu	10/10/2011	10/19/2011	Storms & Lowe
E02.01	Parking Level Elec Plans	10/10/2011	10/19/2011	Storms & Lowe
E02.02	1st Floor Electrical Plan	10/10/2011	10/19/2011	Storms & Lowe
E02.03	2nd Floor Electrical Plan	10/10/2011	10/19/2011	Storms & Lowe
E02.04	Enlarged 1st Floor Elec Plans	10/10/2011	10/19/2011	Storms & Lowe
E02.05	Enlarged 1st Floor Elec Plans	10/10/2011	10/19/2011	Storms & Lowe
E02.06	Enlarged 1st Floor Elec Plans	10/10/2011	10/19/2011	Storms & Lowe
E02.07	Enlarged 2nd Floor Elec Plans	10/10/2011	10/19/2011	Storms & Lowe
E02.08	Enlarged 2nd Floor Elec Plans	10/10/2011	10/19/2011	Storms & Lowe
E02.09	Enlarged 2nd Floor Elec Plans	10/10/2011	10/19/2011	Storms & Lowe
E02.10	Roof Electrical Plan	10/10/2011	10/19/2011	Storms & Lowe
E03.01	Fire Alarm Sym List/Riser Diag	10/10/2011	10/19/2011	Storms & Lowe
E03.02	Parking Level Fire Alarm Plan	10/10/2011	10/19/2011	Storms & Lowe
E03.03	1st Floor Fire Alarm Plan	10/10/2011	10/19/2011	Storms & Lowe
E03.04	2nd Floor Elec Fire Alarm Plan	10/10/2011	10/19/2011	Storms & Lowe
E03.05	Fire Alarm Details	10/10/2011	10/19/2011	Storms & Lowe
E04.01	Unit Load Calculations	10/10/2011	10/19/2011	Storms & Lowe
E04.02	Panel Schedules	10/10/2011	10/19/2011	Storms & Lowe
E04.03	Panel Schedules	10/10/2011	10/19/2011	Storms & Lowe
E05.01	Electrical Details	10/10/2011	10/19/2011	Storms & Lowe
L-001	Landscape Cover Sheet	10/07/2011	10/19/2011	Stephen K. Smith Architect
L-002	Irrigation Plan	10/07/2011	10/19/2011	Stephen K. Smith Architect
L-003	Landscape Plan	10/07/2011	10/19/2011	Stephen K. Smith Architect
L-004	Irrigation Details	10/07/2011	10/19/2011	Stephen K. Smith Architect
L-005	Irrigation Details	10/07/2011	10/19/2011	Stephen K. Smith Architect
L-006	Landscape Legent & Details	10/07/2011	10/19/2011	Stephen K. Smith Architect
M01.01	HVAC, gen notes, legend, symb	10/10/2011	10/19/2011	Storms & Lowe
M01.02	Title-24 Compliance Forms	10/10/2011	10/19/2011	Storms & Lowe
M01.03	Title-24 Compliance Forms	10/10/2011	10/19/2011	Storms & Lowe
M02.01	Parking Level HVAC Plan	10/10/2011	10/19/2011	Storms & Lowe
M02.02	1st Floor HVAC Plan	10/10/2011	10/19/2011	Storms & Lowe



EXHIBIT "A"

CONTRACT DOCUMENTS

01/19/12

Continued...

Reference	Description	Drawing Date	Recieved Date	Architect
M02.03	2nd Floor HVAC Plan	10/10/2011	10/19/2011	Storms & Lowe
M02.04	Roof HVAC Plan	10/10/2011	10/19/2011	Storms & Lowe
M02.05	Enlarged 1st Floor HVAC Plans	10/10/2011	10/19/2011	Storms & Lowe
M02.06	Enlarged 1st Floor HVAC Plans	10/10/2011	10/19/2011	Storms & Lowe
M02.07	Enlarged 1st Floor HVAC Plans	10/10/2011	10/19/2011	Storms & Lowe
M02.08	Enlarged 2nd Floor HVAC Plans	10/10/2011	10/19/2011	Storms & Lowe
M02.09	Enlarged 2nd Floor HVAC Plans	10/10/2011	10/19/2011	Storms & Lowe
M02.10	Enlarged 2nd Floor HVAC Plans	10/10/2011	10/19/2011	Storms & Lowe
M03.01	HVAC Details	10/10/2011	10/19/2011	Storms & Lowe
M03.02	HVAC Details	10/10/2011	10/19/2011	Storms & Lowe
P02.00	Plumb Notes,Legends & Schedule	10/10/2011	10/19/2011	Storms & Lowe
P02.01A	Parking Level Plumb Plan	10/10/2011	10/19/2011	Storms & Lowe
P02.01B	Park Level Plumb,Storm Water	10/10/2011	10/19/2011	Storms & Lowe
P02.02	1st Flr Plumbing Plan	10/10/2011	10/19/2011	Storms & Lowe
P02.03	2nd Flr Plumbing Plan	10/10/2011	10/19/2011	Storms & Lowe
P02.04	Roof Level Plumbing Plan	10/10/2011	10/19/2011	Storms & Lowe
P02.05	Enlarged 1st Flr Plumb Plan	10/10/2011	10/19/2011	Storms & Lowe
P02.06	Enlarged 1st Flr Plumb Plan	10/10/2011	10/19/2011	Storms & Lowe
P02.07	Enlarged 2ndFlr Plumb Plan	10/10/2011	10/19/2011	Storms & Lowe
P02.08	Enlarged 2ndFlr Plumb Plan	10/10/2011	10/19/2011	Storms & Lowe
P03.00	Gas Riser Diagram	10/10/2011	10/19/2011	Storms & Lowe
P03.01	Storm Water Riser Diagram	10/10/2011	10/19/2011	Storms & Lowe
P03.02	Water Riser Diagram	10/10/2011	10/19/2011	Storms & Lowe
P03.03	Domestic Water Riser Diagram	10/10/2011	10/19/2011	Storms & Lowe
P04.00	Plumbing Details	10/10/2011	10/19/2011	Storms & Lowe
P04.01	Plumbing Details	10/10/2011	10/19/2011	Storms & Lowe
S1.0	General Notes	10/17/2011	10/20/2011	David Lau & Associates
S1.1	Gen Notes & Strct Observations	10/17/2011	10/20/2011	David Lau & Associates
S1.2	Typical Details	10/17/2011	10/20/2011	David Lau & Associates
S2.0	Foundation Plan	12/05/2011	12/06/2011	David Lau & Associates
S2.1	Foundation Sect & Details	10/17/2011	10/20/2011	David Lau & Associates
S2.2	Foundation Sect & Details	10/17/2011	10/20/2011	David Lau & Associates
S3.0a	Conc Deck Reb Layout N-S 1st F	10/17/2011	10/20/2011	David Lau & Associates
S3.0b	Conc Deck Reb Layout E-W 1st F	10/17/2011	10/20/2011	David Lau & Associates
S3.0c	Concrete Deck Notes 1st Flr	10/17/2011	10/20/2011	David Lau & Associates
S3.1	Concrete Deck Holdown Layout	12/05/2011	12/06/2011	David Lau & Associates
S3.2	Concrete Deck Sect & Details	10/17/2011	10/20/2011	David Lau & Associates
S3.3	Concrete Deck Sect & Details	10/17/2011	10/20/2011	David Lau & Associates
S4.0	2nd Floor Framing Plan	12/05/2011	12/06/2011	David Lau & Associates
S4.1	Flr Framing Sections & Details	12/05/2011	12/06/2011	David Lau & Associates
S4.2	Flr Framing Sect & Details	10/17/2011	10/20/2011	David Lau & Associates
S4.3	Flr Framing Sect & Details	10/17/2011	10/20/2011	David Lau & Associates
S4.4	Flr Framing Sections & Details	12/05/2011	12/06/2011	David Lau & Associates
S4.5	Flr Framing Sect & Details	10/17/2011	10/20/2011	David Lau & Associates
S5.0	Roof Framing Plan	12/05/2011	12/06/2011	David Lau & Associates
S5.1	Roof Fram Sect & Details	10/17/2011	10/20/2011	David Lau & Associates



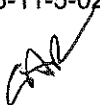
EXHIBIT "A"

CONTRACT DOCUMENTS

01/19/12

Continued...

Reference	Description	Drawing Date	Recieved Date	Architect
S5.2	Roof Fram Sect & Details	10/17/2011	10/20/2011	David Lau & Associates
SH 1.0	Temp Shoring Notes	12/19/2011	12/22/2011	DRS Engineering
SH 2.0	Temp Shoring Plan	12/19/2011	12/22/2011	DRS Engineering
SH 3.0	Elevation, Sections & Details	12/19/2011	12/22/2011	DRS Engineering
Soils Report	Soils Report	12/23/2010	12/23/2010	Stratum Geotechnical Consultants
Spec Book	Division 0 Bid/Contract Rqmnts	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 1 General Requiremnts	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 10 Specialties	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 11 Equipment	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 12 Furnishings	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 13 Special Constr	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 14 Conveying Systems	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 15 Mechanical	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 16 Electrical	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 2 Site Work	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 3 Concrete	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 4 Masonry	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 5 Metals	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 6 Carpentry	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 7 Moisture Protection	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 8 Doors and Windows	10/10/2011	10/10/2011	Pablo Maida Architect
Spec Book	Division 9 Finishes	10/10/2011	10/10/2011	Pablo Maida Architect
T-01.00	Cover Sheet	10/10/2011	10/19/2011	Pablo Maida Architect
T01.01	Accessibility Information	10/10/2011	10/19/2011	Pablo Maida Architect
T01.02	Accessibility Diagrams	10/10/2011	10/19/2011	Pablo Maida Architect
T01.03	Accessibility Diagrams	10/10/2011	10/19/2011	Pablo Maida Architect
T-02.01	Code Compliance	10/10/2011	10/19/2011	Pablo Maida Architect
T-02.02	Code Compliance	10/10/2011	10/19/2011	Pablo Maida Architect
T-02.03	Code Compliance	10/10/2011	10/19/2011	Pablo Maida Architect
T-02.04	Code Compliance	10/10/2011	10/19/2011	Pablo Maida Architect
T-02.05	Code Compliance	10/10/2011	10/19/2011	Pablo Maida Architect



RCI BUILDERS, INC

Job.....0034 <u>CATALINA STREET HOUSING</u> Revision #.....8 <u>ALT REVISIONS</u> Dated <u>12/07/11</u> Phase.....AAA <u>GENERAL CONSTRUCTION</u> Phase SF.....57,941	Owner.....BURBANK HOUSING Arch/Engr.....PMA Location.....N. CATALINA ST., BURBANK, CA
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EXHIBIT "B" OWNER'S BUDGET SUMMARY

BILL ITEM	DESCRIPTION	TOTAL COST	COMMENTS
005	01030-SURVEYING	0	
010	01050-TESTING & INSPECTIONS	0	BY OWNER
015	01060-PERMITS	0	ALL EXCLUDED
020	01070-TEMPORARY SERVICES	10,000	
025	01073-TEMPORARY BARRICADES	0	
030	01111-SECURITY GUARD	30,000	ALLOWANCE FOR CAMERAS
035	01115-CLEAN UP	16,244	
040	02010-DEMOLITION	0	
041	02017-ASBESTOS/LEAD ABATEMENT	0	
045	02800-EXCAVATION	0	
055	02815-PRE TREATMENT	2,800	
060	02820-SHORING	0	
065	02830-STREET LIGHTS	0	EXISTING
066	02860-SITE UTILITIES	76,948	
070	02833-SITE CONCRETE	34,766	
075	02870-PAVING	7,340	
080	02875-TRAFFIC CONTROL	3,500	
085	02876-STRIPING & BUMPERS	1,900	
096	02880-LANDSCAPING	80,345	
097	02885-LANDSCAPE PLANTERS	0	
100	02932-DEWATERING	0	
105	03000-CONCRETE & REBAR	751,015	
110	03801-LIGHT CONCRETE	31,125	
115	03850-GYPCRETE	10,034	
120	04000-MASONRY	72,098	
125	04060-PLANTER WALLS MASONRY	0	IN MASONRY
130	05010-STRUCTURAL STEEL	169,111	
135	05020-MISC IRON	0	
140	05060-ROLL UP GRILLE	14,400	CARD READER NOT INCLUDED
145	06020-ROUGH CARPENTRY	533,000	ALASKAN YELLOW CEDAR INCLUDED
150	06030-FINISH CARPENTRY	20,496	
155	06032-CASEWORK	65,935	INC WHITEOAK W/ PULLS
156	06033-CASEWORK/COUNTERS ISSUES	10,000	ALLOWANCE
160	07010-WATERPROOFING	97,104	
165	07020-SEALANTS	1,500	
170	07030-INSULATION	30,493	

Please note that individual bill items are not guaranteed. They are presented for information only.

RCI BUILDERS, INC

Job.....0034 CATALINA STREET HOUSING	Owner.....BURBANK HOUSING
Revision #.....8 ALT REVISIONS Dated 12/07/11	Arch/Engr.....PMA
Phase.....AAA GENERAL CONSTRUCTION	Location.....N. CATALINA ST., BURBANK, CA
Phase SP.....57,941	

EXHIBIT "B" OWNER'S BUDGET SUMMARY

BILL ITEM	DESCRIPTION	TOTAL COST	COMMENTS
175	07035-FIRESTOP	2,500	
180	07040-ROOFING	76,520	INCLUDES 14OLF OF WALK PADS
185	07060-SHEETMETAL	55,618	
190	07080-SKYLIGHTS	0	EXCLUDED
195	08010-DOORS FRAMES & HARDWARE	103,879	
200	08030-STOREFRONT	7,600	
205	08040-WINDOWS	64,105	ALUMINUM
210	08060-GLASS & GLAZING	11,424	
215	09010-LATH & PLASTER	221,327	
220	09020-DRYWALL & METAL FRAMING	196,035	INCLUDES 2 LAYERS @ CEILING
225	09030-CERAMIC TILE	25,050	
230	09034-SOLID SURFACE	54,298	GROUP 4
240	09061-CARPET	0	
245	09062-WOOD FLOORING	11,180	ALLOW @ 2ND FLOOR COURTYARD
250	09064-RESILIENT FLOORING	94,930	INCLUDES CARPET TILE @ BEDROOM
255	09090-PAINTING	97,926	
260	10000-TUB ENCLOSURES	6,984	
265	10010-BATH ROOM ACCESORIES	10,078	
275	10050-DIRECTORIES	3,500	
285	10110-MAILBOXES	2,559	
290	10160-CHAINLINK FENCE	0	
295	10180-SIGNAGE	7,980	
300	10190-TRASH CHUTES	0	
305	10200-FIRE EXTINGUISHERS	4,200	
310	11240-RESIDENTIAL APPLIANCES	4,515	
315	12010-BLINDS	21,782	BLUE RIBBON 2" WHITE FAUXWOOD
320	14020-ELEVATORS	102,882	
325	15020-PLUMBING	382,542	LG NOT INCLUDED
330	15030-FIRE PROTECTION	84,860	
335	15070-HVAC	172,000	
340	16010-ELECTRICAL	276,000	
342	16015-LIGHT FIXTURE ALLOWANCE	72,000	ALLOWANCE
344	16020-LOW VOLTAGE	17,950	INCLUDES 2 REFUGE LOCATIONS
345	16030-FIRE ALARM	15,885	
350	16090-SECURITY /CAMERAS	0	
900	90000-GENERAL CONDITIONS	324,694	

Please note that individual bill items are not guaranteed. They are presented for information only.

RCI BUILDERS, INC

Job.....0034	Owner.....BURBANK HOUSING
Revision #.....8	Arch/Engr.....PMA
Phase.....AAA	Location.....N. CATALINA ST., BURBANK, CA
Phase SF.....57,941	

EXHIBIT "B" OWNER'S BUDGET SUMMARY

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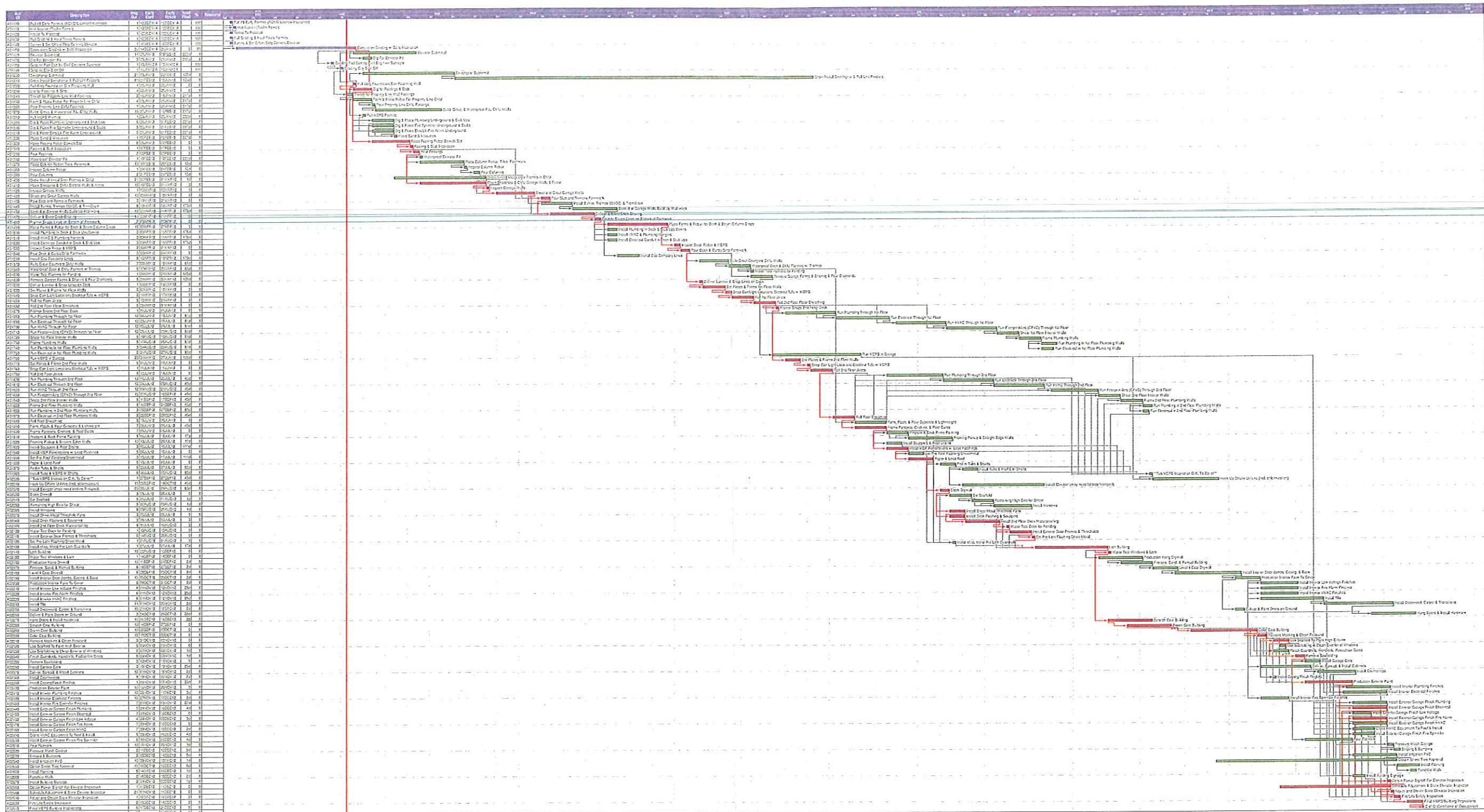


Exhibit "C"

7 days	deputy orite collects these
7 days	
7 days	

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per plan, will not be CAD. Is this true for the consultant? As Insites will be provided



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

The following assumptions, clarifications and exclusions apply to our proposal for the Catalina St. Housing Project.

01000 General Terms

1. Builders Risk shall be provided by Owner.
2. We have included a contingency to be mutually controlled by Contractor and Owner.
3. Working hours to be 7AM to 7PM on weekdays, and 8AM to 5PM on weekends.
4. No loud music, lunch trash, or foul language is permitted.
5. RCI guarantees all work for an Apartment Building, providing a deed is recorded that building will not be converted or sold as Condos for a period of 10 years, after the Certificate of Occupancy.
6. Davis Bacon Act or Federal Prevailing Wage is not a part of this Project.

01050 Testing & Inspections

1. All Testing and Inspection to be by Owner.

01060 Permits & Fees

1. All Government Agency and Utility Fees and Permits are to be paid at cost by Owner. No charge by Contractor will be applied for simply pulling any permit.

01030 Surveying

1. See Separate Contract.

01073 Temporary Barricades

1. No sidewalk pedestrian canopy has been included.

01111 Security Guard

1. Site Security has been included as an allowance.

01115 Clean Up

1. We have included final clean for the building in this line item.

02800 Excavation

1. See Separate Contract.



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

Site Utilities

1. We have included for a new sewer storm drain, and water laterals only. It is assumed that all other offsite work shall be done by City or governing Utility Company crews paid in Developer's City fees. Should the sewer also be required to be installed by City crews, this money shall be refunded. Burbank Water and Power installs to meter boxes, per Ray at BWP.
2. No new street lights are shown or assumed required.

02810 Erosion Control

1. We have included labor and materials for site mitigation due to weather only in this line item.

02820 Shoring

1. See Separate Contract.

02830 Site Work

1. Site work includes all onsite flatwork and steps.
2. All concrete to be standard grey color broom finish, with appropriate finishing per code.
3. No stamping, color, or pattern has been included on the onsite flatwork and steps.

02876 Striping & Bumpers

1. We have included striping per plans and wheelstops where shown.

02932 Dewatering

1. Ground water was not encountered in Soils Report, no dewatering has been included.

03000 Structural Concrete

1. Our proposal is based on current rebar prices given the volatility of the market we reserve the right to adjust the price at time of award.
2. Structural Engineer of Record to review concrete design strength and approve shoring/loading of decks and backfill of walls.
3. We have included scalloped concrete finish on entire garage slab.
4. Please note no structural design of the Van Height Clearance or the the flow through planters is shown yet.

03850 Gypcrete



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

1. We have included Gypcrete with Acousticork or Quietcurl under our floor fill at stacked floor units only.
2. Floor fill at stacked units is included as gypcrete in lieu of lightweight concrete, as it has better sound deadening qualities, is lighter, more flexible, and has less shrinkage cracks. We will add an admixture to increase the psi to 2500 as discussed.
3. We have included lightweight topping over podium deck 1st floor only with a light broom finish for slip resistance.

04000 Masonry

1. Our bid includes normal weight CMU block everywhere as lightweight is not called out.
2. Please note no structural design of the PL screen walls is shown.
3. No masonry caps are assumed or shown.

05010 Structural Steel

1. No galvanization has been included. All railing to be coated in tenemic shop primer and painted.
2. Includes all railing, pedestrian gates, steel stairs and TS Columns, etc. per plan.

05020 Misc Iron

1. See Structural Steel

05060 Automated Gate

1. An aluminum coiling grille has been included per plans and spec by Ventura County Overhead Door, and equal to McKeon and McKendry. We are providing 20 automatic gate transmitters, however an add alternate has been included for a card reader per the spec. A card reader was discussed and dismissed in prior meetings, however is in the specifications.

06020 Rough Carpentry

1. We have included Yellow or Alaskan Cedar Siding and trellis, and also included an allowance for the 2nd floor raised courtyard area which required further clarification. Wood sloping is included.
2. No fire rated wood has been included per discussion, except for the Low Voltage closet plywood backboard.

06030 Finish Carpentry

1. Shelf and poles are mdf and pine, respectively.
2. Crown molding is not shown or included.



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

3. We have included 4" or 3.5" EI & EI mdf base everywhere. Cost is approximately the same, however 4" is called out, but will be thicker than the door casing.

06032 Casework

1. Please note clarifications are required on cabinet layout and design. An \$10,000 Allowance has been included for cabinet and countertop clarification issues.
2. Cabinets are 5 piece shaker cabinets by Radford per typical BHC spec, and discussion with Architect. Upgrade to White Oak per discussions has been included with pulls to be provided by Owner, per discussions.
3. WIC cert not necessary or included.

07010 Waterproofing

1. Waterproofing bid based on discussed assemblies per 12/9/11 Waterproofing Meeting. This includes Paraseal with Polyolefin and drainboard or EPRO S without Polyolefin below grade, 90 mils of Tremco 250GC or equal with Polyolefin and drainboard between slab and in planters, and Miraflex II with building paper underlayment as a trowel on pedestrian deck coating.

07020 Sealants

1. We have included backer rod and caulking of the metal door jambs to the stucco milcor as needed.

07030 Insulation

1. We have included insulation per plans, including foam sealant around doors and windows where stud cavities are too small for conventional insulation, per Title 24. Installer will sign Title 24 Insulation Certification with Architect of Record, and Owner.
2. We have included all interior walls to have sound insulation, per discussions.

07040 Roofing

1. We have included conventional R-30 insulation inside the roof joists, no rigid insulation,
2. Roofing system is to be 60 mil Firestone TPO or equal with 20 year NDL on underlayment and Densdeck substrate for fire rating, per manufacturers spec for warranty.

07060 Sheet Metal

1. All sheet metal shall be field painted.
2. No head flashings have been included over windows.
3. No copper sheet metal is included. Only one detail shows copper, but specifications and other details do not call out copper.



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

07080 Skylights

1. No skylights are shown or included.

08010 Doors, Frames, and Hardware

1. We have included 20 minute rated solid core wood doors and frames at the entry for fire rating, and solid core throughout interior of the units. Please see add alternate for solid core throughout. Please note entry door frames are wood, not hollow metal frames with wood doors per schedule. Panel doors come prefit and prepped with wood frames, which we feel was the desire based on previous meetings.
2. We have included standard rated hold open doors in lieu of the Rite Doors at the elevators agreed per previous meetings.
3. FAU doors are bid as flat slab flush, as panelized door facades come in 80". Specs call for flush, however everywhere else we have included 2-panel doors TM Cobb Equal except for the FAU Closets, per discussions.
4. Please note the hardware schedule called out locksets that are not applicable, i.e entry locks model numbers on bathrooms. Some numbers were probably transposed during spec writing.

08040 Windows

1. Aluminum clear anodized. Please be aware that 12" high windows type H and J only come in 14 1/2" high. Also, Slider Type 18 is only available in 54" wide. Both were priced as such.

08060 Glass and Glazing

1. We have included plate glass mirrors per plan in this line item.

09010 Lath and Plaster

1. We have included a smooth trowel finish on building.
2. Stucco is to be integral color, and painted acrylic two colors.
3. We have included industry standard aluminum XJ-15 expansion joints, and aluminum vent screeds and drip screeds, not vinyl and stainless steel as shown. Per budget meeting this was acceptable with team.
4. Sixty Six Percent of the buildings to be Full Stucco specifications, per sketch by Pablo received on 12/23/11. The remainder of the buildings shall be industry standard smooth trowel specifications as discussed.

09020 Drywall and Metal Framing

1. We have included a standard Level 4 smooth finish with square corner bead.



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

09030 Ceramic Tile

1. We have included Manhattan 3x6 wall tile per plans.

09034 Solid Surfaces

1. We have included LG Solid Surface Countertops Group 4 per previous discussions, the highest priced group. Please note that depending on cabinetry discussions, substantial or no waste could be obtained resulting in either savings or add.

09064 Resilient Flooring

1. We have included Interface glue down, no pad carpet tile in the bedrooms only, color TBD, and LG Decowood elsewhere. Base board to be 4" square profile MDF by EL & EI Wood Products or equal.

09090 Painting and Wallcoverings

1. We have included paint per the specs, with different semi-gloss for the trims.
2. Stucco is to be painted Acrylic.
3. Trellis and Siding is to be transparent satin stain.
4. Railings to be tenemic primer and painted.

10000 Misc Specialties

2. We have included screw in shower curtain rods and curtains in this line item.

10010 Bathroom Accessories

1. We have included Moen bathroom accessories in this line item.

10050 Directories

1. We have included an allowance for a directory in this line item.

10110 Mailboxes

2. We have included a horizontal front loading pedestal mount mailbox by Cutler Inc., or equal. Powder coat 6 color TBD to be chosen by Owner.

10180 Signage

1. We have included all unit numbers and evacuation signage per code, with Braille. Colors to be chosen by owner.



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

10190 Trash Chutes

1. We have excluded any trash chutes per discussion.

10200 Fire Extinguishers

1. We have included recessed mount Ambassador fire extinguishers in the wood framed walls, and surface mount at the concrete or CMU walls.

11240 Appliances

1. With the exception of spreading and install, the appliances shall be by owner.

12010 Blinds

1. We have included 2" white fauxwood blinds

14020 Elevators

1. We have included stainless steel doors and control panel, with laminate cab panels of Owner's choosing, and recessed stainless steel ceiling. Elevator to be code-compliant 3500lb Schindler elevator. Monitoring phone line to be by Owner.
2. We have included an upgrade to the ceiling as recessed down lights. Please note we discussed the Kone EcoSpace Elevator or equal in the meetings, but Kone Monospace was specified. We have included the base cost for the Ecospace, with an add alternate for the upcharge to Monospace or equal, so you can see the true difference in cost between manufacturers(the specs call out a Thyssen Krupp or Schindler Elevator is also acceptable).

15020 Plumbing

1. All Plumbing and government agency fees to be are to be paid at cost by Owner. No charge by Contractor will be applied for simply pulling any permit.
2. LG fixtures have been specified, however they have not been included as previously discussed. We have included Moen, Nortiz, and American Standard Fixtures in base price. Please see add alternate for LG Fixtures.
3. For Construction set of plans now includes double set of sump pumps. We feel these can be reduced back to one set.

15030 Fire Protection

1. We have included a design-build Fire Sprinkler and Alarm System.



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

2. Underground Fire Sprinkler has been included to immediate nearest curb face, connected to BWP installed backflow device. As discussed the Fire line will have to split when it comes into the building, and the Fire Sprinkler room will be unused for storage space.
3. Owner to pay Water Department for Fire Sprinkler backflow and underground vault work, or above grade detector as discussed.
4. Water curtains have not been included in proposal.
5. No standpipe has been included as building should be under required height for standpipe provisions. FDC at street side is included.

15070 HVAC

1. All Mechanical and government agency fees to be are to be paid at cost by Owner. No charge by Contractor will be applied for simply pulling any permit.
2. We have included equipment pad provisions at the roof area, including the garage fan, with our typical discussed lightweight concrete and foam detail. Also, Caldyn neoprene isolator pads have been included.
3. Dryer booster fans will only be used at units where bend and length require them by code. They will require a thicker wall and access panel in these locations. Also, please be advsed they pose a fire hazard if not cleaned and maintained regularly, as well as all dryer exhaust assembly.
4. We have not included opposable blade dampers as it is not typical in residential. Please note that we would prefer not to install OBDs, as they are prone to rattling.

16000 Electrical/Low Voltage

1. All Electrical and government agency fees to be are to be paid at cost by Owner. No charge by Contractor will be applied for simply pulling any permit.
2. We have included Decora style switches and outlets in units, throughout.
3. Light fixture package bid with extremely expensive specified light fixtures, with the exception of 6 light fixtures that still require information. We have included a \$72,000 separate light fixture allowance to use a nice alternate light fixture package including LEDs, if desired. Also, light fixture package could be value engineered further. Further discussion is required.
4. We have included a Miracom DoorKing entry dialer at the front doors, or equal. Phone line to be provided by Owner.
- ~~5. Please see add alternate for refuge intercom system.~~ *CRM*
6. No UPS has been included. All emergency lighting appears to have battery backups.

16030 Fire Alarm

1. We have included a basic design-assist fire alarm system per code, including the garage and the residential areas, monitoring phone line to be by Owner.



Exhibit "E"
Qualifications and Clarifications
Catalina St. Housing

2. Please note we have NOT included the smoke detectors in the units to be tied into the fire alarm. We believe this to be against code.
3. We have included a Silent Knight Fire Alarm Panel, equal or superior to the functions in the specifications.



Catalina Housing
Alternate Analysis
Exhibit "F"

LEGEND-

● Approved

● Rejected

● Discuss/Decision

Alternates:

●	Alternate #2	Provide General Contractor Bond	\$73,137 No Markup
●	Alternate #4	Upgrade to Specified Plumbing Fixtures	\$10,000 + Markup
●	Alternate #6	Upgrade To Specified Light Fixture Package	\$70,000 + Markup
●	Alternate #7	Possible Further V.E. of Light Fixtures	\$-10,000 + Markup(maybe more)
●	Alternate #8	Upgrade Elevator To Kone Monospace	\$40,138 Markup
●	Alternate #9	Upgrage to Thyssen Monospace Equal	\$15,618 + Markup
●	Alternate #11	Upgrade to White Oak Cabinets	\$6,860 + Markup
●	Alternate #13	Deduct Waterproofing Non Standard Apt Specs	\$-30,000 + Markup
●	Alternate #14	Upgrade Plaster Specs	\$45,990 + Markup
●	Alternate #15	Deduct For 16/20 Sand Stucco	\$-28,295 + Markup
●	Alternate #16	Deduct For 20/30 Sand Stucco	\$-10,000 + Markup(maybe more)
●	Alternate #17	Upgrade to Solid Core Doors Everywhere	\$19k to 38k + Markup
●	Alternate #18	Deduct For Built Up 4 Ply Roof	\$-14,000 + Markup
●	Alternate #19	Deduct For Torch Down	\$-2,820 + Markup
●	Alternate #20	Scallop Entire Garage	\$2,000 + Markup
●	Alternate #21	Add Topping Slab to Second Floor	\$13,380 + Markup



**Catalina Housing
Alternate Analysis
Exhibit "F"**

● Alternate #22	Upgrade to Accoya Wood Siding(\$21,500)	\$36,100 + Markup
● Alternate #23	Upgrade to Accoya Wood Trellis	\$Doesn't Exist
● Alternate #24	Upgrade to Group 4 LG Solid Surface	\$5,785 + Markup
● Alternate #25	Use John's Alternate Solid Surface BASIX	\$-11,000 + Markup
● Alternate #26	Add Card Reader to Roll Up Gate	\$2,275 + Markup
● Alternate #27	Tape Insulation Joints per Commercial Spec	\$3,096 + Markup
● Alternate #28	Insulate Bathroom Walls	\$2,590 + Markup
● Alternate #29	Add TPO Walkpads	\$2.50plf + Markup
● Alternate #30	Coping on Parapets	\$12,295 + Markup
● Alternate #31	Insulate All Walls	\$2,590 + Markup
● Alternate #32	Upgrade to TM Cobb Shaker Doors	\$13,000 + Markup
● Alternate #33	Add Refuge Intercom	\$4,200 + Markup
● Alternate #34	Upgrade all Windows to Tempered	\$15,000 + Markup
● Alternate #35	Upgrade Interior Doors to 1-Panel Shaker	\$12,958 + Markup
● Alternate #36	Solar Panel System on Roof	\$TBD + Markup
● Alternate #37	Landscape Upgrades Per Revised Drawings	\$TBD + Markup
● Alternate #38	Bamboo/Renewable Material Cabinets	\$TBD + Markup
● Alternate #38	Include Habitat Type Cabinet Pulls	\$3,150 + Markup
● Alternate #39	Upgrade Exterior Doors to 1-Panel Shaker	\$2,858 + Markup

Exhibit "G"

February 23, 2011

To: Prospective General Contractor

Re: REQUEST FOR PROPOSAL (RFP)
2223, 2225, 2227 and 2235 North Catalina Street

The Burbank Housing Corporation, Owner/Developer, is seeking proposals from qualified general contractors for preconstruction services of the New Catalina project as described herein.

We believe that a team effort is the key to a successful project for all parties. It is our desire, and thus a key element to the evaluation of contractor proposals, to utilize the selected contractor's expertise and creativity during finalization of the Contract Documents; and to assist in value engineering, document quality control, constructability review, scheduling and buyout of the project. The selected general contractor is expected to become a key team member during the preconstruction process.

Award will be based on a thorough evaluation of what you bring to the table. The Owner will be depending on your participation in our process; therefore, your procedures regarding estimating, cost control, scheduling, plan critique, value engineering, and team management are extremely important. This award will not be made on the basis of proposed fees and general conditions alone.

PROJECT OVERVIEW

The project will consolidate four contiguous properties (2223, 2227, 2233, and 2235 North Catalina Street, Burbank, California), demolish the existing structures and construct a two-story townhome complex. The conceptual design consists of four (4) one-bedroom and sixteen (16) two-bedroom townhomes and flats of approximately between 933 to 1,308 square feet respectively over semi-subterranean parking on a full podium deck [see plans attached]. The total site area for all parcels consists of 27,185 square feet with a building coverage of approximately 11,058 square feet, R4-zoned.

GAN

The units will be built to condominium standards and will be a combination of flats and townhomes. The completed project will become part of BHC's "Affordable Housing" projects throughout the Burbank Focus Neighborhoods.

Project Estimate

The project is estimated to be approximately \$4.5 to 5 million dollars.

Development Status

The project is currently under development review with the City of Burbank Planning and Building Departments.

Design Status

Schematic Design is 100% complete and attached for reference. Input from the selected General Contractor will be sought prior to completion of Design Development and Contract Documents. Refer to the attached Schematic Design Progress set of plans.

Project Schedule

The architectural firm of PMA-Pablo Malda Architect- anticipates completing 80% working drawings in July 2011 to be issued for plan check and sub-bidding. It is anticipated that permits will be issued and construction may commence by September, 2011. Construction of the project is anticipated to take 12 months, including demolition of the existing buildings on the project site.

HOA Indemnification

The project will be mapped for the sale of 20 condominium units; however, the units will be leased for a market-driven period of time. At the time, market conditions suggest sale of the units, the Ownership will indemnify the contractor with the purchase of an Owner-Controlled Insurance Policy (OCIP) which will

provide coverage for completed operations for the statutory construction defect limitations. Limits and terms of participation in the Wrap Program by the general contractor and subcontractors will be determined by market conditions.

REQUIREMENTS FOR PROPOSAL

Your proposal should include the following:

1. **Contractor's Fee** - Please propose percentage fee for overhead and profit for the preconstruction and construction phases of the project. Refer to Exhibit A, Clarifications for Submitting Proposals, attached hereto for further clarification as to inclusions in fee.
2. **Contractor's General Conditions** - Please propose all general conditions and field overhead costs that you will require to manage the remaining preconstruction and construction phases of the work in a line item schedule. A further definition of required inclusions in the general conditions is contained in Exhibit A, Clarifications for Submitting Proposals attached herewith. Please utilize the enclosed "Estimated Lump Sum General Conditions" - See Exhibit B.
3. **Bonding and Insurance** - Please state your current bonding capacity and bond premium rate; your current Commercial General Liability Insurance rate; and your Worker's Compensation and Employer's Liability Insurance experience modifier rate (EMR) for the past three years.
4. **Change Order Markup** - Please propose a percentage markup to be charged on top of construction hard costs for change order work. Said percentage fee is to include all profit, home office overhead, field overhead, bond costs, processing charges, and all extended and/or consequential general conditions. Line item increases for supervision, etc., will only be allowed if a proposed scope change extends the critical path of the project schedule.

5. **Separation Fee** - Please provide a cost for a separation fee should the Owner elect not to enter into a construction agreement after the preconstruction phase and working drawings have been completed. The separation fee shall represent the entire cost contractor would incur at termination after preconstruction with no further recourse against Owner.
6. **Contractor Qualifications Material** - Please provide a list of references for similar projects you have completed within the past four years, including contact names of Owner, Architect and Owner's Representative, if applicable.

THE REMAINING PRECONSTRUCTION PROCESS

1. At 1:00 p.m. on Friday, March 04, 2011, proposals are due. Clarification, analysis and interviews will occur the week of March 14, 2011 to determine the most qualified proposer by March 18, 2011.
2. It is the Owner's intent to award the project to the contractor that demonstrates the highest qualifications, proposes a competitive percentage fee, general conditions, and most importantly, demonstrates the ability to meet the criteria for a proactive team player as described herein.
3. It is our intent to award a Preconstruction Agreement by March 21, 2011.

Subsequent to award, you will join the Development Team and be asked to provide the following preconstruction activities:

1. **Schematic Design Estimate** - Provide a Schematic Design Estimate of Probable Cost in line item CSI format. The Schematic Estimate of Probable Cost will not be binding, but it is our expectation that you will do sufficient in-house analysis and receive sufficient subcontractor input in the major trades such that it is reasonable to expect that the final GMP established after competitive sub bidding will remain stable.
2. **Design Development Preliminary GMP** - Upon completion of Design Development, prepare a Preliminary GMP Proposal in line item CSI format. Again, the Preliminary GMP will not be binding, but it is our expectation that you will receive at least one sub-bid proposal in each trade such that it is reasonable to expect that the final GMP established after competitive sub-bidding will not exceed the Preliminary GMP, subject only to scope changes.
3. **Preliminary Plan Reviews** - Upon receipt of the Design Development and Construction Document Issue of plans, provide a list of any errors, omissions, discrepancies and/or coordination issues that you or your subs may discover. It is our goal to identify any problems that you or your subs encounter such that we may get plans ready for sub-bidding with minimum exposure to future unsolicited Change Order Requests or claims.
4. **Value Engineering** - Provide a priced list of any value engineering suggestions that may come up during your plan review of the project for each major issue of project plans (Schematic Design, Design Development and Construction Documents). In this context, we are looking for analysis of systems, details and assemblies to determine more cost-effective methods of achieving the design intent rather than a summary of proposed reductions in scope.

5. **Bid and Award** - Upon completion of Construction Documents, put the project out for broad base subcontractor bidding and prepare a GMP proposal for award. Please refer to Exhibit A attached hereto for a further understanding of Owner's GMP buyout process.
6. **Time to Completion and Project Schedule** - Concurrently with the final GMP Proposal, Provide a preliminary CPM schedule of the major elements of the work, including the number of calendar days that you will require for completion of all construction work to substantial completion after issuance of building permits and notice to proceed.

SUBJECTIVE EVALUATION

The following Issues are not required with your response to this RFP, but will be covered during our review process and final interviews. They are included at this time to give you a better understanding of the Owner's concerns and to allow you time to prepare yourself accordingly.

1. State your experience in engaging in an "open book" process leading to a negotiated price, GMP contract and identify any issues that you would want to have addressed regarding this process.
2. Please review with us how your organization will manage both the preconstruction and construction phases of the project. Please discuss staffing and the extent to which principals and senior management of your firm will be involved in the guidance of day-to-day preconstruction and construction activities.
3. Please review with us your workload both in preconstruction and construction work at this time and your ability to commit experienced personnel to all phases of this project. It is important to the Owner that the contractor selected will make a major commitment to this project of highly-qualified personnel. It will be our intent to interview your key personnel, including the project manager, superintendent and other staff that you propose assigning to the project for both preconstruction and construction.

4. Location of this project within an area will pose some issues in controlling costs and maintaining the project schedule. We will need to review your methodology relating to staging, phasing, project setup, protection of adjacent properties, access and deliveries in the context of the Conditions of Approval which will mitigate impact on the neighbors around the project site.
5. Obviously, we are looking for your candid feedback of your concerns and where you see the risks in this project. We would like to explore any ideas you may have which may provide a value-added approach to the success of this project.

SUBMITTAL OF PROPOSALS

Four copies of your proposal must be received no later than 1:00 pm on Friday, March 04, 2011. Proposals shall be submitted to:

Attn: Judith Arandes
Burbank Housing Corporation
1819 Grismer Avenue
Burbank, CA 91504
Phone :(818) 559-2336
Fax: (818) 559-9668

January 23, 2011
Request for Proposal
Page 8

Proposals must be sent via US Mail or hand delivered by **Friday, March 04, 2011.**
Emailed or fax proposal will not be accepted.

Any questions regarding the proposal or submittal requirements should be directed to Sylvia Ruvalcaba, Senior Project Manager, at 818.559.2336.

Sincerely,

Judith Arandes
Executive Director
Burbank Housing Corporation

Enclosures:

Exhibit A- Clarification for Submitting Proposals dated 01/07/11
Exhibit B- Estimated Lump Sump General Conditions Expenses
Schematic Design Package dated 02/04/11 prepared by PMA Architects
Soils Report dated 12/03/10 prepared by Stratum Geotechnical Consultants

EXHIBIT A

CLARIFICATIONS FOR SUBMITTING PROPOSALS

INTERPRETATION OF DOCUMENTS

All questions regarding interpretation of the documents and this Request for Proposal shall be addressed to the Project Manager as follows:

Burbank Housing Corporation
1819 Grismer Avenue
Burbank, CA 91504
Phone (818) 559-2336
Fax (818) 559-9668
Attn: Sylvia C. Moreno
Email: smoreno@burbankhousingcorp.org

EXAMINATION OF DOCUMENTS AND PROJECT SITE

Before submitting your fee proposal, please examine the Schematic Drawings carefully, read the Conditions of Approval, and visit the site of the work to review the existing conditions. Please fully inform yourself prior to proposing as to existing conditions at the site and limitations under which the work is to be performed, and include in your proposal all costs to cover the items necessary to implement, manage and coordinate the work as set forth in the RFP and the referenced documents.

DETERMINATION OF FEE AND GENERAL CONDITIONS

Please thoroughly evaluate the scheduling issues and time to complete the work, and the supervision and General Conditions required to manage the project in accordance with the requirements of this RFP. Please submit a percentage Fee, including all profit and home office overhead, and a Lump Sum Cost in two parts for your General Conditions, including any preconstruction services, which contractor will require to manage the preconstruction and the construction phases of the project.

The following is intended to clarify what is intended to be included in Fee, General Conditions, reimbursable project costs (direct costs) and what costs are not in contract (NIC).

INCLUSIONS IN CONTRACTOR'S FEE

Contractor's Percentage Fee shall include all home office overhead and profit for both the preconstruction and construction phases of the project. Please identify your percent markup for overhead and profit separately. The following items shall be included in Fee and shall not be considered to be a General Conditions item or a Reimbursable Cost of the Work:

- All state and local fees for business license fees and/or taxes required to do business in the City of Oakland and Alameda County, except City of Oakland gross receipts tax.
- Capital expenses, including interest on the contractor's working capital employed for the Work.
- Contractor's profit.
- Federal, state, and local income and property taxes.
- Home office or other office telephone/telegraph and facsimile charges.
- Home office overhead, general, legal, and accounting expenses and all other expenses incurred at contractor's principal office or other branch offices or locations other than the field office.
- Miscellaneous blueprinting, copying, postage, delivery, and priority mail services emanating from the home office, except as specifically scheduled in the General Conditions.
- Overhead, general, insurance, legal, and accounting expenses, and all employee expenses at contractor's principal offices and other offices or locations other than the field office, except as specifically scheduled in the General Conditions.
- Public Liability/Property Damage (PL/PD) insurance premiums.
- Repairs to defective or non-conforming work.
- Replacement or repair of damage or vandalism not covered by insurance.
- Salaries and compensation of contractor's personnel located at principal offices or locations other than the jobsite, including project managers, estimators, expeditors, purchasing agents, administrative assistants, secretaries, and clerks, with the exception of personnel assigned to the project as part of the agreed General Conditions.

- Salaries/compensation for contractor's principals and officers, regardless of location.
- Subcontractor bonding premiums, but only if it is the contractor's policy to bond all subcontractors.
- Workers' compensation insurance premium for permanent salaried employees, with the exception of personnel assigned to the project as part of the agreed General Conditions.

INCLUSIONS IN GENERAL CONDITIONS (INCLUDING PRECONSTRUCTION SERVICES)

The following items (if required in the performance of the Work) shall be included in the General Conditions summary and shall not be included with the direct or Hard Costs of the Work which will be determined upon sub trade bidding.

- Blueprinting and copy service at field office for contractor generated documents
- Conditions of Approval administration
- Contractor's owned-equipment rental
- Delivery/messenger service charges for documents sent from the field office
- Detailing and drafting
- Drinking water
- Dual-gate signage and administration
- Expeditors (including payroll burden)
- Field engineers (including payroll burden)
- Field office equipment, including furniture, computers, copy machines, fax machines, telephones and all other FF&E items for field office
- Field office supplies, paper, faxing, postage, printing, and miscellaneous
- Field offices and trailers
- Field purchasing agents (including payroll burden)
- Fire extinguishers
- First aid
- Fuel and maintenance for equipment included herein
- Generators
- Guarantee and warranty administration
- Job clerks or secretaries (including payroll burden)
- Job expeditors (including payroll burden)
- Job photos
- Miscellaneous hauling and drayage
- Miscellaneous supplies not incorporated into the Work
- Mobilization, move-on and -off charges
- Operating and Maintenance Manual administration
- Pickup trucks for supervisory and other field personnel

- Preconstruction expenses
- Project accountants (including payroll burden)
- Project closeout administration
- Project estimators (including payroll burden)
- Project foreman (including payroll burden)
- Project managers (including payroll burden)
- Project temporary signage
- Project superintendents (including payroll burden)
- Punch list administration
- Record drawings (as-builts) administration
- Safety, including OSHA administration
- Sales tax on purchases not incorporated into the Work
- Scheduling, including scheduling consultants
- Shop drawings and submittal administration
- Small tools and equipment not incorporated into the Work
- Storage sheds/trailers
- Street barricades and traffic control
- Telephone hookup and monthly charges (field office)
- Temporary barricades and safety rails
- Temporary fencing and gates
- Temporary lighting or heating
- Temporary power monthly charges
- Temporary protection
- Temporary toilets
- Temporary water hookup and monthly charges
- Trash removal
- Travel and subsistence
- Unloading and miscellaneous material handling
- Vehicle rental and maintenance (for field staff)
- Worker parking for field staff

INCLUSIONS IN REIMBURSABLE COSTS (DIRECT COSTS OF THE WORK)

The following direct costs, as required, will be included in the cost of the Work by the general contractor or the sub trades performing the Work and, as such, are a Reimbursable Cost of the Work (hard costs):

- Cleanup during construction
- Concrete pumping
- Consumable construction supplies
- Debris boxes/dump fees
- Demolition, including repair of post-demolition conditions
- Erosion control and dewatering
- Equipment rental in connection with trade work incorporated into the Work

- Exterior scaffolding and plank
- Final janitorial cleanup
- Final site cleanup
- Forklift, unloading and miscellaneous material handling
- Fuel and maintenance for equipment herein
- Hoisting for equipment and material deliveries
- Interior scaffolding and rolling towers
- Labor to install material incorporated into the Work
- Layout and batterboards
- Luffing crane
- Man lift installation and rental
- Materials and equipment incorporated into the Work
- Mockups and samples (if required)
- Offsite construction as required by the City of Oakland
- Payroll taxes, fringes and other payroll charges normally designated as "labor burden" on all direct-hire field labor
- Periodic cleanup (including street cleaning)
- Power cords and temporary power boxes
- Premiums for contractors or subcontractor's Labor and Materials and Faithful Performance Bonds only if authorized in writing by Owner
- Sales taxes on materials and equipment incorporated into the Work
- Shipping and freight charges on materials incorporated into the Work
- Subcontracted work
- Subcontractor permits
- Subcontractors' cleanup of their own work
- Subcontractors' PL/PD insurance premiums
- Subcontractor bonding premiums for those subcontracts where purchase of a bond is authorized by the Construction Manager prior to obtaining the bond.
- Surveying and staking
- Temporary power poles, hookup and installation of temporary service
- Undergrounding of high voltage PG&E and AT&T services as required by the City of Oakland
- Winterization and dewatering
- Workers' compensation insurance on direct-hire labor

OWNER'S COSTS AND COSTS NOT IN CONTRACT

The following Owner's costs will be paid directly by the Owner and are not to be included in the contract (NIC).

- All costs normally categorized as "Owner soft costs"
- Architecture, engineering, and all design consultants (except design/build consultants included in sub bids)
- Building permit fees, P-job fees and demolition permit fees

- City assessments and entitlement fees
- Electric and gas fees (for permanent services)
- Encroachment permits
- Financing costs
- Materials testing except for retesting of work found deficient or non-conforming
- Plan check fees
- Property taxes during construction
- Public works, street and encroachment permits
- Security and guard service
- Sewer connection fees
- Soils observation, pile installation observation and compaction testing, except retesting of work found deficient or non-conforming
- Special inspection except reinspection of work found deficient or non-conforming
- Telephone service fees (permanent services)
- Tenant improvement (T.I.) construction
- Utility abandonment and/or service disconnection fees
- Utility connection fees (permanent services)
- Water/fire service meter fees (permanent services)

FINAL GUARANTEED MAXIMUM PRICE BUYOUT

Upon Architect's completion of the Plans and CSI Specifications and final review by contractor and Construction Manager, contractor shall put the project out for competitive bids to a broad selection of qualified subs and suppliers in all trades as selected by contractor and approved by Construction Manager.

It is the Owner's intent to have an open book bid review process to clarify work scope, compliance with Contract Documents, and subcontractor's qualification to determine jointly to which subcontractors and suppliers the specific trade work will be awarded. Contractor and Construction Manager shall hold pre-award interviews with all major subcontractors to verify subcontractor's qualifications and to identify errors and omissions and other possible value engineering savings. Said meetings shall be attended by Construction Manager, who will work closely with the contractor to qualify, analyze, and review all of the bids. The Owner views this as an important process in the reduction of risk to both Owner and contractor.

During the bid process, contractor shall ask the low bidders in each trade for their input as to suggested savings, alternative methods, and materials of construction, as well as identification of any design problems, plan discrepancies, errors and/or omissions that they may have discovered in the Contract Documents during bidding.

FINAL GUARANTEED MAXIMUM SUM BUYOUT DATE

Contractor shall provide that all work scope for the entire project will be analyzed and awarded (bought out) no later than sixty (60) days after receipt of sub bids, except for allowance work.

After the buyout date and fixing of the Guaranteed Maximum Price (GMP), contractor will be fully responsible to provide all systems, materials, equipment, devices, labor, and all subcontractor work scope as required by the Contract Documents without further increase to the GMP.

CONTRACTOR'S DIRECT WORK

Contractor shall identify those items of work that he/she proposes to perform with direct-hire labor. Line-item labor and material breakdowns of your direct-hire work shall be provided with all backup, takeoff, and pricing sheets to enable Construction Manager to determine if scope is complete and pricing is competitive.

OWNER'S CONTINGENCY ALLOWANCE

Contractor shall include a Contingency Allowance of five percent [5%] in the GMP to be utilized during construction for unforeseen conditions. Approval to apply contingency funds to line-item work shall be at the Construction Manager's sole discretion. Contingency work shall be authorized by a Construction Change Directive (CCD) or by Change Order with no additional sums to be added for contractor's Fee or General Conditions above the lump sum amounts as included in the GMP, unless the Work to be covered by contingency can be clearly demonstrated to affect substantial completion or other bona fide General Conditions costs.

The Contingency Allowance shall not be used for scope changes. Should any contingency work be necessary after exhausting the Contingency Allowance, it shall be added without an increase to the project GMP.

Should the final costs as expended for contingency work or of any other allowances be less than the amounts as established in the GMP, and then the remaining balance of said contingency or other allowance shall be deducted from the GMP by Change Order.

FINAL GUARANTEED MAXIMUM SUM PRICE

The final GMP for the contract at completion of buyout will be the sum of the contractor's Lump Sum General Conditions, all direct costs (reimbursable costs of the Work), including all subcontracted work, contractor's direct-hire work at actual awarded costs (with no additional markup by the contractor beyond contractor's agreed Fee and Lump Sum General Conditions), plus all equipment and contract materials normally purchased FOB jobsite, tax included, and all agreed-upon labor for their installation, including standard labor burden, plus Owner's five [5%] percent Contingency Allowance, plus contractor's proposed Percentage Fee. This Final Guaranteed Maximum Price will be incorporated into the Agreement between Owner and Contractor by Change Order.

CHANGE ORDER MARKUP

General contractor may include the percentage markup as proposed to be applied to all direct costs in the preparation of any scope Change Orders to the project. Subcontractors shall be limited to a markup of five percent (5%) on Change Order work. The percentage markup to be applied to Change Orders shall include all overhead, profit, and extended General Conditions costs for the General Conditions items as enumerated herein. A line item increase to General Conditions costs for Change Order work will only be allowed if contractor can demonstrate that the proposed Change Order extends the critical path and, hence, the completion date of the project or adds materially to any General Conditions cost as defined herein.

PROJECT SCHEDULING

Upon award, it will be contractor's responsibility to prepare a detailed construction CPM schedule including regular updates on a continuing basis from time of award to completion of the project.

Contractor's schedule should be developed to meet the Owner's required completion date. Contractor shall obligate all subcontractors and other contract purchases between the contractor and third parties providing work and/or services to the project to comply with the Owner's completion date. Time is of the essence of this agreement.

CONTRACTOR INPUT INTO CONTRACT DOCUMENTS

Prior to the completion of the bid set of Construction Documents, contractor will be expected to thoroughly evaluate and review the plans and specs for value engineering suggestions, methods and means of construction, alternate details and assemblies, constructability issues, and conformance to sound building practices, standards and quality. It is the Owner's intent to utilize contractor's experience, skill, and expertise in arriving at a quality set of Contract Documents prior to subcontractor bidding so as to reduce exposure to the maximum extent possible to future unsolicited Change Orders and claims for extra cost and/or extra time.

MUTUAL BENEFIT

We believe that there is a significant benefit to both parties with a negotiated form of contract. Contractor will have adequate time to identify errors and/or omissions in the Contract Documents during the remaining design period and during buyout which could otherwise cause additional cost to the project not contemplated and, hence, risk to both parties. Therefore, in consideration of these mutual benefits:

1. Owner guarantees an exclusive relationship with the selected contractor as long as contractor's pricing remains stable and consistent with the established budget; and contractor continues to satisfactorily perform the remaining preconstruction efforts with respect to time of performance as shown in the Project Development Schedule.

2. Contractor warrants that the final Guaranteed Maximum Price to be arrived at as of completion of the buyout period will be a total and sufficient sum to produce all of the project Work in compliance with the full intent of the Contract Documents.
3. Contractor further agrees that he/she will make no claims for additional costs or time for any deficiencies, discrepancies or misinterpretations in the scope of the Work as reasonably intended by plans, specifications and/or other Contract Documents for issues that contractor or his/her subcontractors may subsequently claim to discover once the final GMP is fixed, in excess of the established GMP including Contingency.
4. If there are any conflicts in the final plans and/or Contract Documents involving errors and/or omissions discovered subsequent to the final GMP, and such conflicts, errors, or omissions could not have been reasonably foreseen by contractor, the Work will be performed at cost and deducted from the Contingency Allowance with no additional General Conditions or percentage fees added to the cost of the Work.

INSURANCE

1. The Owner requires that all insurance must be maintained with California-licensed companies rated A: VII or better in Best's Key Rating Guide. The Owner is willing to consider and accept other companies which, in the opinion of the Owner, will protect the Owner's interests as well as or better than companies rated A: VII. If a proposer proposes to utilize an insurance company that is unrated or rated lower than A:VII, the proposer must submit a request that the Owner approve the insurance company. The Owner will review the proposed insurance company and render a ruling on its acceptability. The Owner will not accept any insurance company not meeting the required rating unless a request is made and approved. All requests for approval of an insurance company shall be made in writing.
2. All required insurance policies and endorsements are to be submitted by the contractor prior to the time the Agreement Between Owner and Contractor is signed.

PROJECT BONDS

1. It is not the Owner's intention to bond all subcontractors. Should it be contractor's policy to bond all subcontractors, then contractor shall cover the cost for sub bond premiums in contractor's Percentage Fee. However, Owner and contractor may agree in writing to the bonding of certain subcontractors to reduce risk, and when so mutually agreed, the cost for subcontractor bonding shall be a Reimbursable Cost of the Work. Any subcontractor bonding must be approved by Construction Manager prior to inclusion of sub bond premiums as a Reimbursable Cost of the Work.

February 23, 2011

2. If requested by lender, contractor may be required to furnish a Faithful Performance/Labor and Materials Bond in the amount of one hundred percent (100%) of the contract price on forms satisfactory to the Owner. If required, said bond premiums will be added to the Contract GMP by Change Order with no additional markup for Fee or General Conditions.

WORKER'S COMPENSATION

The proposer's attention is directed to the requirement that every employer is to be insured against liability for Workers' Compensation. Contractor shall submit a certificate of Worker's Compensation Insurance to the Owner, in a form satisfactory to Owner, prior to the time the Agreement Between Owner and Contractor is signed.

EXECUTION OF AGREEMENT

It is the Owner's intent to enter into an agreement with contractor promptly upon selection of the successful proposer in order to authorize the remaining preconstruction services and to fix the fees, terms, and conditions for the construction of the project. Upon completion of the Contract Documents, subcontractor bidding, analysis, and award, and establishment of the final GMP for the project, the Agreement Between Owner and Contractor shall be amended by Change Order to include the final Contract Documents, a detailed enumeration of inclusions, exclusions, qualifications and allowances, the agreed project construction schedule and the final contract GMP for the Work.

SEPARATION FEE

Owner will pay a separation fee in the amount as agreed to the contractor upon satisfactory completion of preconstruction services should contractor not be authorized to proceed with the remaining construction phases of the project. Contractor agrees that said separation fee will represent contractor's complete cost for all preconstruction costs without recourse against Owner for loss of profit, loss of opportunity, or any other proposed, contingent or consequential damages. Owner reserves the right to terminate this agreement for convenience at any time prior to the notice to proceed for construction, and for any reason, subject only to payment of the separation fee as defined herein. All of the unsuccessful contractor's work product shall become the property of Owner upon payment of the separation fee.

OWNER'S RIGHTS

The Owner reserves the right to reject any or all proposals and to waive any informality or irregularity in any proposal received and to be the sole judge of the merits of the respective proposals received. The award, if made, will be made to the most qualified, responsive and responsible proposer, as determined at the sole discretion of the Owner.

END OF EXHIBIT A

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/01/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Hub International HUB Int'l Insurance Serv. Inc. P.O. Box 3310 Santa Barbara, CA 93130-3310	CONTACT NAME: PHONE (A/C, No, Ext): 805-618-3718 FAX (A/C, No): 805-832-6582 E-MAIL ADDRESS:
INSURED RCI Builders Inc. 2985 E. Hillcrest Dr., #107 Thousand Oaks, CA 91362	INSURER(S) AFFORDING COVERAGE INSURER A : Scottsdale Insurance Company 41297 INSURER B : Oak River Insurance Company 34630 INSURER C : Peerless Insurance Company 24198 INSURER D : INSURER E : INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X	X	BCS0027051	03/01/2012	03/01/2013	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA8619539	03/01/2012	03/01/2013	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			XLS0080362	03/01/2012	03/01/2013	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A		2200060914121	03/01/2012	03/01/2013	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Property			CBP8610340	03/01/2012	03/01/2013	Rented equipm \$30,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RE: New Catalina, 2223-2235 N. Catalina St., Burbank, CA. Burbank Housing Corporation, its officers, employees, agents, and representatives are named as additional insured with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named insured. Coverage is primary and non-contributory. General liability waiver of subrogation applies.

CERTIFICATE HOLDER Burbank Housing Corporation 1819 Grismer Avenue Burbank, CA 91504	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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